

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 18,946

FILED APR 14 1965

Nathan J. Paulson
CLERK

FUGAZY TRAVEL BUREAU, INC.,

Petitioner

v.

CIVIL AERONAUTICS BOARD,

Respondent.

Appeal From Orders of the
Civil Aeronautics Board

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AIR TRAFFIC CONFERENCE OF AMERICA
RESOLUTION TO IMPLEMENT AREA SETTLEMENT PLAN

RESOLVED, That

1. Section I. of Resolution 80.10 is amended by adding the following new subsections:

"T. The term 'airline identification plate' means a plate bearing the airline's name (or authorized abbreviation) and code number and the agent's name, location and code number, for use in a machine for the validation of tickets; the form, dimensions and material of which plate may be specified from time to time by the Executive Secretary.

U. The term 'designated area bank' means a bank, designated to receive and process sales reports and remittances from authorized agency locations in a designated geographic area: Provided, That no bank which has a Bank Travel Department shall be designated, or continue to be designated, as an area bank.

V. The term 'Secretary-AFAC' means the Executive Secretary of the Airline Finance and Accounting Conference."

2. Section IV.A. of Resolution 80.10 is amended to read:

"A. The Executive Secretary shall maintain, for the information of the members, an Air Traffic Conference Agency List which shall be kept current, shall show for each authorized agency location a five-digit code number assigned by the Executive Secretary, and shall be published at such intervals and in such manner as the Agency Committee may from time to time prescribe. The names of Agents and authorized agency locations shall be placed on, and removed from, the Agency List only as provided in this Section. No member shall appoint or retain any person as its Agent, or

any place of business as an authorized agency location, unless such person and such location appear on the Agency List then in effect. The Agency List in effect on the effective date of this Section shall continue in effect except as names and/or locations are added, deleted or changed in accordance with this Section. The Executive Secretary shall furnish to the Designated Area Bank a copy of the Agency List as it pertains to authorized agency locations in the area serviced by the bank and shall promptly advise the bank of any changes in such list."

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3. Section IV.E. of Resolution 80.10 is amended to read:

"E. After receipt of notice from the Executive Secretary that execution of a Sales Agency Agreement with a person has been completed, any member may appoint such person as its Agent by executing and delivering to such person a Certificate of Appointment in such form and manner as may be prescribed from time to time by the Agency Committee, and may also deliver to such person airline identification plates for use at authorized agency locations: Provided, That no such Certificate shall bear a date prior to the date on which it is transmitted to the Agent. A copy of each such Certificate shall be forwarded to the Executive Secretary at the same time the original is transmitted to the Agent, and the Executive Secretary shall periodically notify all other members of the receipt of such copy. The Certificate of Appointment shall cover all authorized agency locations operated by the Agent: Provided, That the appointing member need not supply ~~ticket forms and/or exchange orders~~ airline identification plates to all such authorized agency locations operated by the Agent."

4. Section IV.I.6. of Resolution 80.10 is amended to read:

"6. Such removal shall be subject to the appeal by the Agent as provided in Paragraph 27 of the Sales Agency Agreement. During the pendency of such appeal, unless such Agent posts bond as specified in Paragraph 27 of the Sales Agency Agreement, each member who has the Agent under appointment shall withdraw its ~~ticket-stock~~ airline identification plate(s) from the Agent and shall issue to the Agent Air Transportation Exchange Orders which shall be accepted in exchange for an official ticket only if the full payment, including tax, is enclosed therein, or is tendered by the passenger at the time he presents the Order for exchange; but, if such Agent posts bond as specified in said Paragraph 27, each member which has the Agent under appointment and which had supplied the Agent with ~~ticket-stock~~ airline identification plate(s) prior to cancellation shall continue to supply the Agent with ~~its~~ such plates. In the case of an Agent who does not post such bond, if the arbitral tribunal directs that the Agents be restored to the Agency List, or if the Agency Committee reinstates such Agent prior to issuance of the arbiter's decision, each member shall promptly remit to the Agent commissions on the transportation sold by him during the pendency of the appeal; otherwise, no commissions shall be paid for transportation sold during this period."

5. Section IV.I.(7) of Resolution 80.10 is amended to read:

"(7) Where review of an Agent or authorized agency location discloses breach of the Sales Agency Agreement, but the Agent or location is not otherwise ineligible, the Committee may, in lieu of removal, direct that the Agent be suspended for a period of not to exceed 90 days. Such direction for suspension shall be by two-thirds vote of the Committee Members present at the

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meeting. During such period of suspension, each member shall withdraw all ~~ticket forms and exchange orders~~ airline identification plates supplied by it to such Agent or location and revoke any authorization previously given to such Agent or location to draw its own exchange orders on such member. Such suspension shall be subject to notice, recordation of reasons, and arbitration as hereinabove provided."

6. Section IV.J. of Resolution 80.10 is amended to read:

"J. If the Agency Committee or any member shall determine that any Agent is failing to ~~comply with his (its) obligations under the second sentence of the second paragraph of Paragraph 5 of the Sales Agency Agreement, or has failed to~~ maintain the bond as required by ~~Section IV-H~~ Paragraph 5.A of the Sales Agency Agreement, such Committee or member shall promptly so notify the Executive Secretary. The Executive Secretary shall immediately so notify all members, and shall terminate the Sales Agency Agreement with such Agent on behalf of all members."

7. Section IV.K. of Resolution 80.10 is amended to read:

"K. If, at any time or for any reason, any member cancels the appointment of any Agent, such member shall promptly so notify the Executive Secretary, giving the reasons for such cancellation, and shall promptly repossess the airline identification plate from each agency location. The Executive Secretary shall promptly transmit such information to all other members. If all members who have appointed an Agent cancel such appointment, the name of the Agent shall be removed from the Agency List."

8. Section IV.N. of Resolution 80.10 is amended to read:

"N. During the pendency of an application for approval of an additional authorized agency location, an Agent who has been on the ATC Agency List for at least one year may deliver at the location covered by said application tickets or exchange orders written up and validated as an approved location of the Agent, provided that the Agent has the written consent of the member whose ~~ticket-stock is so delivered~~ airline identification plate is used on such tickets, which consent shall not be given until after receipt by the member of notice from the Executive Secretary that said application has been duly filed with him."

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9. Section IV-A-A. (Canada) of Resolution 80.10 is amended to read:

"A. The Executive Secretary shall maintain, for the information of the members, an Air Traffic Conference Agency List which shall be kept current, shall show for each authorized agency location a five-digit code number assigned by the Executive Secretary, and shall be published at such intervals and in such manner as the Agency Committee may from time to time prescribe. The names of Agents and authorized agency locations shall be placed on, and removed from, the Agency List only as provided in this Section. The Agency List in effect on the effective date of this Section shall continue in effect until modified in accordance with this Section. The Executive Secretary shall furnish to the designated area bank a copy of the Agency List as it pertains to authorized agency locations in the area serviced by the bank, and shall promptly advise the bank of any changes in such list."

10. Section IV-A.E. (Canada) of Resolution 80.10 is amended to read:

"E. As soon as practicable after the name of any person has been placed on the Agency List as provided in Paragraph C of this

Section, the Executive Secretary shall, as agent for and on behalf of all members, enter into a Sales Agency Agreement with such person, and shall notify all members of the date on which the execution of such Agreement is completed. After receipt of such notice from the Executive Secretary, any member may appoint such person as its Agent by executing and delivering to such person a Certificate of Appointment in such form and manner as may be prescribed from time to time by the Agency Committee, and may also deliver to such person airline identification plates for use at authorized agency locations: Provided, That no such Certificate shall bear a date prior to the date on which it is transmitted to the Agent. A copy of each such Certificate shall be forwarded to the Executive Secretary at the same time the original is transmitted to the Agent, and the Executive Secretary shall periodically notify all other members of the receipt of such copy."

11. Section IV-A.F. (Canada) of Resolution 80.10 is amended to read:

"F. The Certificate of Appointment shall cover all authorized agency locations operated by the Agent: Provided, That the appointing member need not supply ticket-forms and/or exchange orders airline identification plates to all such authorized agency locations operated by the Agent."

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12. Section IV-A.I. (Canada) of Resolution 80.10 is amended to read:

"I. If, at any time or for any reason, any member cancels the appointment of any Agent, such member shall promptly so notify the Executive Secretary, giving the reasons for such cancellation, and shall promptly repossess the airline identification plate from each agency location. The Executive Secretary shall promptly transmit such information to all other members. If all

members who have appointed an Agent cancel such appointment, the name of the Agent shall be removed from the Agency List."

13. Section IV-A.J. (Canada) is hereby repealed. The Section shall be marked "Deliberately left blank" in the Trade Practice Manual.

~~"J. - If the Agency Committee or any member shall determine that any Agent is failing to comply with his (its) obligations under the second sentence of the second paragraph of Paragraph 5 of the Sales Agency Agreement, such Committee or member shall promptly so notify the Executive Secretary. - The Executive Secretary shall immediately so notify all members, and shall terminate the Sales Agency Agreement with such Agent on behalf of all members."~~

14. A. The first sentence of Section VII.A. of Resolution 80.10 is amended to read:

"A. If any Agent fails to remit to any member within fifteen days after ~~such remittance is due~~ the last day of the sales report period prescribed by under the terms of the Sales Agency Agreement, such member shall immediately (after confirming the non-remittance by telephone or telegraph with the designated area bank) so notify the Executive Secretary."

- B. The second paragraph of Section VII.A. of Resolution 80.10 is amended to read:

"If any Agent or applicant remits to any member by check and such check is dishonored by the drawee bank because of insufficient funds, such member shall immediately so notify the Executive Secretary by telegraph giving the name and address of such Agent and bank and the amount of such check. Upon receipt of such notice from a member or from a designated area bank, ~~The~~ the Executive Secretary shall immediately transmit such information by telegraph to all members who have appointed such Agent

and to surety on the bond or bonds maintained pursuant to Paragraph A. of Section VI., or, in the case of an applicant, to all members by mail."

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15. Section VII.B. of Resolution 80.10 is amended to read:

"B. If any member, pursuant to Paragraph 15 of the Sales Agency Agreement with any Agent, elects to withdraw ~~all ticket forms and exchange orders~~ the airline identification plates supplied by it to such Agent and revoke any authorization previously given to such Agent to draw its own exchange orders on such member, such member shall immediately, by telegram, so notify the Executive Secretary. Upon receipt of such notice, or upon receipt of notice that any Agent has failed to remit in full to a designated area bank within ten days after such remittance was due, The the Executive Secretary shall immediately so notify all members by telegram and the Secretary-AFAC and such member who has appointed such Agent, who shall immediately, ~~but in no event later than ten days after the date of the notice from the Executive Secretary,~~ withdraw all ticket forms and exchange orders supplied by it him to such agent, and each member who has appointed such agent shall immediately revoke any authorization previously given to such Agent to draw its own exchange orders on such member, and shall reposses any airline identification plates furnished to such Agent. ~~No member~~ The Secretary-AFAC shall not thereafter provide such Agent with supplies of its ticket forms or exchange orders, ~~or~~ and no member shall thereafter authorize such Agent to draw its own exchange orders on such member, or provide such agent with an airline identification plate, until 7 days after the ~~date upon which~~ Executive Secretary mails a notice to each member that he has been advised that such Agent is no longer in default to the member which originally gave notice pursuant to this

Paragraph B has satisfied or adjusted all amounts due any member."

16. Section VII.C. of Resolution 80.10 is amended to read:

"C. If the sales report and/or remittance due any member from any Agent is not ~~received by such member within six days,~~
~~or within nine working days in the case of an Agent which oper-~~
~~ates at least 10 authorized agency locations and which reports~~
~~three times a month, after the date on which such Agent is re-~~
~~quired to remit pursuant to~~ transmitted to the designated area
bank as required by Paragraph 5 of the Sales Agency Agreement,
such member the Executive Secretary shall, on being notified of
such delinquency, immediately send to such Agent by certified or
registered mail, return receipt requested, ~~with a copy to the Ex-~~
~~ecutive Secretary,~~ a letter in the form prescribed from time to
time by the Agency Committee, Provided, -That such letter may
~~be rescinded by the member if the Agent's remittance, even~~
~~though received late, is postmarked (by post office mark, not~~
~~postage meter) not later than the fourth day after the remittance~~
~~was due,~~ and shall promptly notify all members of the dispatch
of such letter. At the end of each month, the Executive Secretary
shall compile a list of the names and addresses of all Agents to
whom such letters, not afterwards rescinded, were sent during
the month, and shall send a copy of such list to each member and
to the office of the International Air Transport Association desig-
nated by such Association to receive such information. If the
name of any Agent appears on such monthly

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lists, or on similar monthly lists published by the International Air
Transport Association, Traffic Conference No. 1, four times dur-
ing any twelve consecutive months, the Executive Secretary shall
promptly so notify all members and the office of the International

Air Transport Association to which such lists are sent, and Each member who has appointed such Agent shall, within fourteen days of the date of such notice, withdraw all ticket forms and exchange orders supplied by it to such Agent and revoke any authorization previously given to such Agent to draw its own exchange orders on such member. - No member shall thereafter provide such Agent with supplies of its ticket forms or exchange orders, - or authorize such Agent to draw its own exchange orders on such member, until 7 days after the date on which the Executive Secretary mails a notice to each member that the Agency Committee has reviewed the eligibility of such Agent pursuant to Paragraph G, Section IV, of this Resolution, and has approved such Agent. the Secretary-AFAC, who shall promptly withdraw all ticket forms and exchange orders supplied by him to such Agent, and each member who has appointed such Agent shall, within fourteen days of notice from the Executive Secretary, withdraw its airline identification plates(s) and revoke any authorization previously given to such Agent to draw its own exchange orders on such member. The Secretary-AFAC shall not thereafter provide such Agent with supplies of ticket forms or exchange orders, and no member shall thereafter supply such Agent with its airline identification plate(s) or authorize such Agent to draw its own exchange orders on such member, until seven days after the date on which the Executive Secretary mails a notice to each member that the Agency Committee has reviewed the eligibility of such Agent pursuant to Section IV.I. of this Resolution (or Section IV.G., if the agent is located in Canada), and has approved such Agent."

17. Section VII.F. of Resolution 80.10 is amended to read:

"F. If any member, or designated area bank, pursuant to Paragraph I of Section IV or Paragraph A or B of this Section, notifies the Executive Secretary that an Agent has failed to remit to such

~~member~~, or has remitted by check and such check was dishonored by the drawee bank because of insufficient funds, the Executive Secretary shall immediately transmit such information to the office of the International Air Transport Association designated by such Association to receive such information. If the Executive Secretary receives information from the International Air Transport Association that any Agent has failed to remit to any member of that Association, or has remitted by check and such check was dishonored by the drawee bank because of insufficient funds, he shall immediately transmit such information to all members who have appointed such Agent."

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18. Section XI. of Resolution 80.10 is hereby repealed.

~~"No member shall authorize an Agent to remit at intervals less frequent than the 1st and 16th days of each calendar month unless at least ten authorized agency locations are operated by such Agent."~~

The following new Section XI. is hereby adopted:

"XI. Withdrawal of Ticket Stock

Whenever, under the terms of this Resolution, the Secretary-AFAC is required to withdraw Standard Agent's ticket forms and exchange orders from an Agent, he shall designate a member to recover such ticket stock. The member so designated shall promptly recover from the Agent all Standard Agent's ticket forms and exchange orders, and all airline identification plates, and dispose thereof as directed by the Secretary-AFAC."

19. Section XIV.D. of Resolution 80.10 is amended to read:

"D. Upon termination of the ATC Sales Agency Agreement with an Agent, the Secretary-AFAC shall withdraw all ticket and exchange order forms from the Agent and each member shall withdraw ticket forms and exchange orders promptly repossess the

the airline identification plate from each agency location supplied to such Agent and revoke any authorization previously given such Agent to draw its own exchange orders on such member, and shall withhold such ~~forms~~ identification plates and authorization from such Agent unless such Agent is restored to the Agency List, except as such supply or authorization is specifically required or authorized in other Sections of this Resolution: Provided, That, if the member has such Agent under IATA appointment, the member shall notify the Agent in writing that ticket forms and exchange orders held under such IATA appointment shall not be used for the sale of domestic air transportation."

20. Resolution 80.10 is amended by inserting the following new Section XV, and renumbering the remaining Sections accordingly.

"Section XV. Carrier Ticket Stock Under Special
Supplemental Agreement

A. No member shall provide an Agent with supplies of the member's ticket forms or exchange orders except in conformity with this Section.

B. Any member may, if it so elects, enter into a Special Supplemental Sales Agency Agreement, in the form prescribed by Resolution 80.16, with any Agent it has under appointment, and thereafter provide such Agent with supplies of its ticket forms or exchange orders for issuance solely for transportation to or from points outside the area of the Continental United States

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and Canada, as provided in said Special Supplemental Sales Agency Agreement. Immediately upon entering into, or cancelling, such Special Supplemental Sales Agency Agreement, the member shall notify the Executive Secretary, who in turn shall notify all members, and make appropriate entry on the ATC Agency List.

C. During the period of effectiveness of any such Special Supplemental Sales Agency Agreement:

(1) the member shall report to the Executive Secretary defaults and receipt of dishonored checks thereunder, as provided in Section VII.A. of this Resolution,

(2) if the Sales Report and/or remittance due from any Agent pursuant to such Special Supplemental Sales Agency Agreement is not received within six days after the date on which such Agent is required to remit pursuant to said Agreement, such member shall immediately send to such Agent by certified or registered mail, return receipt requested, with a copy to the Executive Secretary, a letter in the form prescribed from time to time by the Agency Committee, and the Executive Secretary shall treat such notice of delinquency as though received from a designated area bank, for purposes of Section VII.C. of this Resolution,

(3) at any time or during any period when the member is required by the provisions of this Resolution to withdraw its airline identification plate from such Agent, it shall also withdraw its ticket forms and exchange orders issued pursuant to said Special Supplemental Sales Agency Agreement.

(4) No member shall authorize an Agent to remit at intervals less frequent than the 1st and 16th days of each calendar month, except that an Agent which operates at least 10 authorized agency locations may be authorized to remit at intervals not less frequent than once a calendar month.

D. Nothing in this Resolution shall be deemed to preclude a member from providing, or continuing to provide, supplies of its ticket forms or exchange orders, for issuance solely for transportation to or from points outside the area of the Continental United States and Canada, to Agents the member has under IATA appointment.

E. If an Agent is temporarily unable to issue Standard Agent's tickets due to loss or break down of the Agent's validating equipment, or exhaustion of the Agent's supply of the standard ticket forms, any member may, for the period of the emergency, supply the Agent with envelope-type exchange orders, or authorize the use for domestic air passenger transportation of ticket forms or exchange orders supplied under IATA appointment. The member shall instruct the Agent to report and remit directly to the member for sales made under such emergency arrangements, and, if the emergency spans a normal

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reporting period, to submit a "no sales" report to the designated area bank. The member shall notify the Executive Secretary of such emergency arrangements, and the Executive Secretary shall take immediate measures to correct the situation."

21. The sixth subparagraph of Paragraph 2 of Resolution 80.15 is amended to read:

~~"In selling air passenger transportation which originates on the lines of the Carrier, the Agent shall issue tickets or exchange orders supplied by the Carrier; if the Agent does not have any tickets or exchange orders supplied by the Carrier, it may issue tickets or exchange orders supplied by any other air carrier which is a party to the Air-Traffic Conference Agency Resolution and which participates in the air passenger transportation; if the Agent does not have any tickets or exchange orders supplied by any such air carrier, the Agent may issue tickets or exchange orders supplied by any other air carrier which is a party to the Air-Traffic Conference Agency Resolution."~~

"In selling air passenger transportation hereunder, the Agent shall use, in the following order of preference, the airline identi-

cation plate of air carriers which are parties to the Air Traffic Conference Agency Resolution:

a. The Carrier through which the reservation is made, provided such Carrier participates in the routing, or

b. The Carrier performing the first sector of the transportation, or

c. If the Agent does not have either plate specified above, the plate of any Carrier which is scheduled to participate in the transportation, or

d. If the Agent does not have any of the plates specified above, the Agent may use the plate of any other Carrier."

22. Paragraph 4 of Resolution 80.15 is amended to read:

"4. ISSUANCE OF TICKETS AND EXCHANGE ORDERS:

~~The Carrier may, at its option, provide the Agent with supplies of its ticket forms or exchange orders for issuance to the Agent's clients to cover transportation purchased, or, if written authorization is given to the Agent by the Carrier, the Agent may draw its own exchange orders on the Carrier.~~

In selling air passenger transportation on the lines of the Carrier, the Agent shall issue only Standard Agent's tickets or exchange orders supplied pursuant to this Agreement, except to the extent the Carrier (1) authorizes the Agent, in writing, to draw its own exchange orders on the Carrier, (2)

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supplies the Agent with, and instructs the Agent to use, envelope-type exchange orders, or (3) the Carrier provides the Agent with supplies of its ticket forms or exchange orders and enters into a Special Supplemental Sales Agency Agreement covering the issuance and use thereof, or (4) the Carrier provides the Agent with

supplies of its ticket forms or exchange orders for issuance pursuant to the IATA Passenger Sales Agency Agreement. The Agent shall deliver to its clients the proper forms of tickets or exchange orders as authorized from time to time by the Carrier; and routing information, et cetera, shown on any such documents shall be in accordance with the applicable rules, regulations and instructions furnished to the Agent by the Carrier.

Standard Agent's ticket forms or exchange orders for issuance to the Agent's clients to cover transportation purchased will be supplied to the Agent by the Executive Secretary of the Airline Finance and Accounting Conference (hereinafter called 'Secretary-AFAC') as agent for the Carrier.

All ticket forms and exchange orders supplied by or on behalf of the Carrier to the Agent shall remain the property of the Carrier, and shall be held in trust by the Agent until issued to the Agent's clients to cover transportation purchased, or until otherwise satisfactorily accounted for to the Carrier, or to the Secretary-AFAC.

The Agent will procure, at no expense to the Carrier, one or more validator machine(s), or ticket writer(s), of a type approved by the Secretary-AFAC, for use at each place of business covered by this Agreement in the issuance of Standard Agent's tickets or exchange orders pursuant to instructions issued from time to time by the Carrier or the Secretary-AFAC.

The Carrier may, at its option, provide the Agent with one or more airline identification plate(s) for use in the issuance of tickets in said validator machine or ticket writer. Such airline identification plate shall remain the property of the Carrier, and shall be returned to it upon demand or upon the termination of this Agreement as between the Agent and the Carrier.

Ticket forms and exchange orders supplied by or on behalf of the Carrier for issuance at a specified place of business covered

by this Agreement shall not be issued at or through any other place of business, nor shall an airline identification plate supplied for use at a specified place of business be used at any other place of business."

23. Paragraph 5 of Resolution 80.15 is amended to read:

"5. COLLECTIONS AND REMITTANCES:

The agent shall report and remit three times each month for all transportation or ancillary services sold hereunder (and for which the Agent has issued

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Standard Agent's tickets or exchange orders, or drawn exchange orders on the Carrier). The first such report shall include all such sales during the first ten days of the month, the second shall include all such sales during the second ten days of the month, and the third shall include all such sales during the remaining days of the month. The report shall be on a form supplied by the Secretary AFAC.

The Agent shall cause each such report, together with auditor's coupons supporting documents and remittance, to be delivered to a bank designated by the Air Traffic Conference of America, not later than the close of banking hours on the third working day (i.e., excluding Saturdays, Sundays and federal and state legal holidays) following the last day of the period covered by the report: Provided, That the Agent shall be deemed to have complied with this requirement if the envelope containing the sales report, remittance and supporting documents is postmarked (by post office mark, not postage meter) not later than midnight of the second such working day.

If no transportation has been sold hereunder during any such period, the Agent shall, in lieu of a sales report, transmit a no

sales report, on a form to be supplied by the Secretary-AFAC, to the designated bank.

The sales report shall account, in such manner as may be prescribed from time to time by the Carrier or by the Secretary-AFAC, for all sums due the Carrier hereunder, and for all transportation receipts and other required documents accepted by the Agent in payment for air transportation sold hereunder (and for which the Agent has issued Standard Agent's tickets or exchange orders, or has drawn exchange orders on the Carrier) pursuant to the Universal Air Travel Plan.

The Agent shall retain his duplicate copy of each sales report and his copies of supporting documents, for at least two years.

Remittances of moneys shall be made in official currency of the country in which the Agent is located, or its equivalent, unless otherwise instructed in writing by the Executive Secretary. If remittance is made by the Agent's check, the check shall be made payable in accordance with the instructions given from time to time by the Executive Secretary.

All moneys, less applicable commissions to which the Agent is entitled hereunder, collected by the Agent for air passenger transportation or ancillary services sold hereunder (and for which the Agent has issued Standard Agent's tickets or exchange orders or has drawn exchange orders on the Carrier) and all transportation receipts and other required documents accepted by the Agent in payment for air passenger transportation or ancillary services sold hereunder (and for which the Agent has issued Standard Agent's tickets or exchange orders or has drawn exchange orders on the Carrier) pursuant to the Universal Air Travel Plan, shall be the property of the Carrier, and shall be held in trust

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by the Agent until satisfactorily accounted for to the Carrier. The Agent shall, if so requested in writing by the Carrier, procure or maintain, or cause to be procured and maintained, for the benefit of the Carrier and without expense to the Carrier or the Air Traffic Conference of America, a bond or bonds providing such coverage, and in such amounts, as shall be satisfactory to the Carrier.

The books and records of the Agent relating to the sale of transportation offered by the Carrier shall be open to inspection by the Carrier and/or an auditor or other duly authorized representative of the Air Traffic Conference of America."

24. The following provision of former Paragraph 5 of Resolution 80.15, for effectiveness January 1, 1963, is hereby redesignated Paragraph 5.A., to read:

"5.A. MAINTENANCE OF BOND (NOT APPLICABLE IN CANADA):

The Agent shall, without expense to the Carrier or the Air Traffic Conference of America, procure and maintain, or cause to be procured and maintained, for the joint and several benefit of the members of the Air Traffic Conference of America, a bond or bonds, conditioned upon the Agent's compliance with the provisions of this Agreement with respect to remittances to the Carrier, in a form prescribed from time to time by the Agency Committee of said Conference in the minimum amount of \$10,000, such amount to be increased whenever necessary to cover the average of the three highest months (of the last 12) gross sales of air transportation for the accounts of members of the Air Traffic Conference: Provided, That, (a) the Agent shall not be required to maintain said bond in an amount in excess of \$50,000; (b) the Agent shall be relieved of the requirement to provide coverage in excess of the \$10,000 minimum if:

- (1) the Agent is determined by the Executive Secretary to be a 'Bank Travel Department' within the meaning of the Air Traffic Conference Agency Resolution, or
 - (2) the Agent submits to the Executive Secretary annually a current balance sheet, certified by a certified public accountant to present fairly the financial position of the Agent, which establishes that total assets available for satisfaction of debts exceed liabilities by at least \$75,000, and the credit rating of the Agent, if published by Dun and Bradstreet or other recognized credit-rating agency, is shown as 'good' or higher;
- and (c) after the Agent has been on the Air Traffic Conference Agency List for one year, adjustment of the amount of the bond to provide coverage in excess of the \$10,000 minimum need not be made more often than semi-annually."

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25. The third subparagraph of Paragraph 8 of Resolution 80.15 is amended to read:

"In cases of cancellation by the Agent's client of any portion of the transportation sold by the Agent and for which the Agent has issued a ticket or exchange order supplied by or on behalf of the Carrier . . ."

26. Paragraph 10 of Resolution 80.15 is amended to read:

"10. REFUNDS:

The Agent may refund any fare or charge applicable to air transportation sold by the Agent hereunder and for which the Agent has issued a ticket or exchange order supplied by or on behalf of the Carrier. The Agent shall make refund only to the person authorized to receive the refund and in accordance with the tariffs, rules, regulations and instructions issued by the Carrier, and shall not assess or withhold from the refund payee any amount as a serv-

ice charge or otherwise. The Agent hereby agrees to indemnify and hold the Carrier harmless from and against any claim arising from the failure of the Agent to refund promptly to the authorized refund payee the proper amount of fare or other charge. If the amount refundable was collected by the Agent and remitted to the Carrier prior to making the refund, the Carrier shall reimburse the Agent the amount of such refund upon receipt of the Agent's written statement that the refund has been paid."

27. Paragraph 15 of Resolution 80.15 is amended to read:

"15. DEFAULT:

If at any time the Agent is in default to the Carrier or to any other party to the Air Traffic Conference Agency Resolution, the Carrier, at its option, may either terminate this Agreement, as between it and the Agent, by notice in writing to the Agent, such notice to take effect immediately upon its receipt, or may, for such periods as it deems advisable, withdraw all ticket forms and exchange orders supplied by it to its airline identification plate from the Agent and revoke any authorization previously given to the Agent to draw its own exchange orders on the Carrier, and the Secretary-AFAC may, for such periods as he deems advisable, withdraw all Standard Agent's ticket forms and exchange orders supplied to the Agent."

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28. Paragraph 18 of Resolution 80.15 is amended to read:

"18. LIABILITY:

The Carrier hereby agrees to indemnify and hold harmless the Agent, its officers, agents and employees from all responsibility and liability for any damage, expense, or loss to any person or thing caused by or arising from any negligent act or omission of the Carrier, its representatives, agents, employees, or servants,

and related directly or indirectly to any transportation sold by the Agent hereunder and performed or to be performed by the Carrier. The Agent likewise agrees to indemnify and hold harmless the Carrier, its officers, agents and employees from all responsibility and liability for any damage, expense, or loss to any person or thing caused by or arising from any negligent act, omission, or misrepresentation of the Agent, its representatives, agents, employees, or servants. The Agent further agrees to indemnify and hold harmless the Carrier, its officer, agents and employees, from any and all damage, expense, or loss on account of the loss, misapplication, theft, or forgery of tickets, exchange orders, or other supplies furnished by or on behalf of the Carrier to the Agent, or the proceeds thereof, whether or not such proceeds have been deposited in a bank, and whether or not such loss is occasioned by the insolvency of either a purchaser of such forms or documents or of a bank in which the Agency may have deposited such proceeds, and notwithstanding the fact that, under the terms of this Agreement, such proceeds are the property of the Carrier and held in trust by the Agent."

29. Paragraph 24 of Resolution 80.15 is amended to read:

"24. TERMINATION:

This Agreement may be terminated as between the Agent and the Carrier, at any time by notice in writing from either to the other, such notice to take effect immediately upon its receipt, subject to the fulfillment by each of all obligations accrued prior to the receipt of such notice. This Agreement may be terminated as between the Agent and all parties to the Air Traffic Conference Agency Resolution, at any time by notice in writing from the Agent to the Executive Secretary of the Air Traffic Conference of America, or from the Executive Secretary of the said Conference (or his authorized representative) to the Agent, such

notice to take effect immediately upon its receipt, subject to the fulfillment, by the Agent, and by each party to the said Resolution which has delivered a Certificate of Appointment to the Agent, of all obligations accrued prior to the receipt of such notice. Upon termination of this Agreement as between the Agent and the Carrier, ~~all unused ticket forms and exchange orders of the Carrier~~ the airline identification plate shall immediately be returned to the Carrier, together with all moneys due and payable to the Carrier hereunder, and a complete and satisfactory accounting rendered. Upon termination of this Agreement as between the Agent and parties to the Air Traffic

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Conference Agency Resolution, all unused Standard Agent's ticket forms and exchange orders shall immediately be returned to the Secretary-AFAC, and all airline identification plates shall immediately be returned to the Carrier, together with all moneys due and payable to the Carrier hereunder, and a complete and satisfactory accounting rendered."

30. Paragraph 27.d. of Resolution 80.15 is amended to read:

"d. Status Pending Arbitration: Upon or prior to notifying the Executive Secretary that he demands arbitration, the Agent shall surrender the airline identification plates to each party to the Air Traffic Conference Agency Resolution ~~any of its ticket stock held by him,~~ and to the Secretary-AFAC all Standard Agent's ticket forms and exchange orders supplied to the Agent, unless he posts with the Executive Secretary a bond (or a supplement to any pre-existing bond furnished under Paragraph 5 hereof), in an amount not less than the Agent's highest sales of air transportation commissionable hereunder in any one of the 12 preceding calendar months, expressly conditioned

upon remittance in full, less applicable commission, during the pendency of arbitration, and upon holding harmless each Carrier from any liability it might incur to Agent's customers by reason of Agent's failure to deliver tickets paid for, or refund payments made, during the pendency of arbitration. During the pendency of such arbitration, Agent may continue to sell air transportation in accordance with the terms and conditions of this Agreement. If the Agent posts the bond hereinabove referred to, the Secretary-AFAC shall continue to supply Agent with Standard Agent's ticket forms and exchange orders, and each Carrier which had supplied the Agent with ticket stock airline identification plates prior to cancellation shall continue to supply him with ticket stock such plates, and said remittance shall be made in accordance with the procedures prescribed in Paragraph 5 hereof.

If the Agent does not post said bond, remittance shall be made in full, without deduction of commissions, for such transportation prior to or upon the issuance of tickets, through the use of envelope-type Air Transportation Exchange Orders or such other arrangements as may be agreed upon, and, if the arbitral tribunal directs reinstatement of Agent, or if the Agency Committee of the Conference reinstates such Agent prior to issuance of the arbiters' decision, he shall be entitled to, and each Carrier shall promptly remit to him, commissions at the rates set forth herein for transportation sold by him during the pendency of arbitration, but in no other circumstances shall Agent be entitled to, or receive, commissions from any such Carrier for transportation sold during the pendency of arbitration."

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31. A new Resolution No. 80.16, specifying the form of the Special Supplemental Sales Agency Agreement, attached hereto as Attachment "A", is hereby adopted.
32. Resolution 80.46 is repealed.
33. The Standard Agent's Ticket and Area Settlement Plan, as herein established, shall be administered by an Interconference Area Settlement Plan Committee composed of eight members, two of whom shall be members of each of the following committees: Ticketing and Baggage (ATC), Agency (ATC), Data Processing (AFAC) and Revenue Accounting-Passenger (AFAC). The terms of reference of Interconference Committee shall include:
 - A. Supervision of the development, implementation and maintenance of such procedures and manuals as may be required for the proper control of the operations of the program, including the conduct of negotiations and the maintenance of proper liaison with specified banks;
 - B. Selection of suitable types of validators, ticket writers, routing plates, etc;
 - C. Formulation of policies and specifications for purchase, control and distribution of:
 1. Validators,
 2. Ticket writers,
 3. Routing plates,
 4. Ticket stock,
 5. Other traffic documents,
 6. Operating space and equipment;
 - D. Authority to revise operating procedures and practices for temporary periods in the event such revision becomes necessary to assure continuity of operations, it being understood that such actions will be referred at the earliest possible moment to airline participants in the program for ratification or rejection.

The Interconference Committee shall function as a standing Committee of the Air Traffic Conference, except that the Data Processing and Revenue Accounting-Passenger representatives shall be designated by the Airline Finance and Accounting Conference.

At such time as the IATA airlines may elect to participate in the program, representation on the committee shall be revised to assure equitable representation by both Associations, provided that, in the meantime, IATA shall be invited to designate three representatives to attend the Committee's meetings in a liaison capacity.

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34. Resolution 80.50 is amended to read:

~~Each Member shall, effective upon exhaustion of its present supply of Agency Sales Report Forms, require ATC Agents to use an Agency Sales Report Form conforming to either of the copies attached hereto as Exhibits A and B.~~

"The Interconference Area Settlement Plan Committee shall, from time to time, prescribe a standard form of Agency Sales Report, which shall be published in the Trade Practice Manual, and shall be purchased and distributed to all Agents by the Executive Secretary of the Airline Finance and Accounting Conference.

The Interconference Area Settlement Plan Committee shall also prescribe, from time to time, a standard form or forms of Agency Sales Report, which members shall require Agents to use in connection with the Special Supplemental Sales Agency Agreement. Such standard form shall be published in the Trade Practice Manual. The printing and distribution of such forms shall be the responsibility of the member or members entering into Special Supplemental Sales Agency Agreements with Agents."

35. Resolution 80.60 is repealed.

NOTE: Letters to delinquent Agents are covered in amended Section VII.C. of Resolution 80.10, Item 14 above.

36. The following new Resolution is hereby adopted:

SHARING OF AGENCY FUNDS FOLLOWING SHORTAGE UNDER
AREA SETTLEMENT PLAN

"RESOLVED, That, if any Agent participating in the Standard Ticket and Area Settlement Plan for Sales Agents fails to remit, or to remit in full, to the designated area bank as required by the plan, and does not make up such shortage, such funds as he remits to the bank or are otherwise recovered by an airline participating in the plan shall be prorated among all participating airlines in proportion to the Agent's sales under the plan for them respectively from the date of the last sales report for which he remitted in full to the bank."

37. The cost of Standard Agent's ticket forms and exchange orders, and of Agent's Sales Report forms, shall be prorated among the members in proportion to the number of tickets settled under the plan for each such member to the total number of tickets so settled. The cost of the initial stock of tickets shall be prorated among the members in proportion to the number of tickets

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sold by Agents for each such member during the month of June 1961 to the total number of tickets sold by Agents during that period.

38. The Standard Agent's Ticket shall be in the form attached hereto as Attachment "B". Promptly upon adoption of this Resolution, the special committee appointed pursuant to item 3.D of the minutes of the April 1962 Conference meeting (Conference Bulletin No. 332, May 2, 1962) shall proceed to develop detailed specifica-

tions for the ticket and reduce them to resolution form for incorporation in the Trade Practice Manual.

39. This resolution shall not take effect until the resolution has been approved by the Civil Aeronautics Board pursuant to Section 412 of the Federal Aviation Act. Upon such approval, the Executive Secretary shall promptly determine a schedule of dates for implementation of the resolution, which schedule may provide for implementation in one bank area at a time, with a reasonable implementation time lag between areas. Implementation in the first bank area shall take place not less than 90 days after Board approval, unless otherwise directed by the Conference, and shall proceed as rapidly as feasible.

Adopted: Mail Vote Consummated September 4, 1962

Effective: See Paragraph 39 above

Filed with CAB by letter dated September 7, 1962

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STANDARD AGENT'S TICKET AND AREA SETTLEMENT PLAN

As requested at the last Air Traffic Conference meeting held on April 17-18, 1962, the ATA Subcommittees-Sales Agents met for the purpose of refining and finalizing the Standard Ticket and Area Settlement Plan proposal which was attached to the Conference agenda as Exhibit "C". The Subcommittees have given consideration to the recommendations of ASTA, among others, and where practical have incorporated these recommendations in the Plan.

Following is a summary of the Standard Ticket and Area Settlement Plan, hereinafter referred to as the Plan, as proposed by the Subcommittees. Particular care was taken in developing the Plan and related procedures to minimize costs and to present a new concept which

would be the most acceptable to the carriers and travel agents in general.

From the outset, agents have enthusiastically endorsed the idea of a standard ticket with single reporting. Objections were registered, however, by individuals and ASTA against the original plan of weekly reporting. From the carriers' view, the reporting procedure was of paramount importance since, unless moneys accruing from the sale of air transportation became more readily available to the carriers, the cost to the designated area banks of approximately 3¢ per item could not be justified.

Based upon the present semi-monthly reporting requirement, the original plan of weekly reporting, and ASTA's request for monthly reporting or at least maintenance of the status quo, certain airlines conducted extensive cash flow surveys in order to determine the results of these various reporting schedules. It was determined that a compromise plan of reporting for periods ending on the 10th, 20th and last days of each month would provide a good cash flow, would result in an improvement over the present schedule, and would not unduly penalize the airlines in giving up weekly reporting. It was also felt that the travel agents would find the compromise satisfactory. The same compromise was established with respect to the time in which the reports are due. While the original plan envisioned the report being mailed within 24 hours of the close of the report period, the final plan now calls for the report being mailed within two working days, or, if delivered other than by mail, within three working days, as against the present six calendar days. Here again, the airline cash flow surveys included various grace periods. The final agreed upon period does not penalize the airlines, and it offers the agents what should certainly be an acceptable compromise.

Attached hereto as Exhibit I are cash flow charts on which the Subcommittees based the decision. Also attached as Exhibit II is an excerpt from a letter written by the Continental Illinois National Bank

and Trust Company of Chicago, a potential designated area bank in the Chicago area, which explains its charge per item for processing agents' sales reports and also its position with respect to being designated an area bank.

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It is noteworthy to mention here that the resolution provides for the establishment of a standing committee, hereinafter called the Inter-conference Area Settlement Plan Committee, which will administer the Standard Ticket and Area Settlement Plan. The resolution further provides for the composition of the Committee and its terms of reference.

By way of explanation, it should be noted that the original purpose of creating a joint subcommittee of ATC and AFAC was to develop an industry procedure for an agent's ticket and ticket writer program with a related industry remittance and settlement plan. It was determined by the joint subcommittee that the over-all project, from necessity, needed to be divided into two phases. The first, or short range phase, encompasses the program herein described, while the second and long range phase will deal solely with the placement of ticket writer machines and routing plates in agencies on an industry basis. Therefore, while the terms of reference in the first resolution include areas connected with phase two, it has been the joint subcommittee's unanimous opinion that much additional study and analysis will be required before it can present any industry proposal for phase two.

A. OBJECTIVES

There are many desired and beneficial objectives of the Plan, such as:

In behalf of agents:

1. To alleviate the agent's work load by reducing to one universal type the number of ticket forms to be stocked and issued;
2. To centralize the source from which an agent must requisition ticket stock;

3. To simplify paper work by reducing to one the number of sales reports the agent must prepare each reporting period;
4. To centralize the location to which an agent must send its sales reports and make remittances;
5. To enable an agent to employ the most modern ticket issuing devices which save time, reduce costs and present its customer with an attractive and legible ticket.
6. To supply the agent with a versatile ticket form which can be issued by machine or by hand as the tariff and itinerary complication dictates.

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In behalf of airlines:

(The benefits accruing to agents as enumerated above also directly or indirectly accrue to the airlines.)

1. To improve cash flow;
2. To assure that the maximum number of tickets issued will be uniform, legible, and, to the greatest extent possible, efficiently adaptable to scanning, key punching and computer operations.
3. To provide ticket forms for agent and airline issuance which are easy to issue and easy to process at the airport ticket-lift positions, and all of which can be issued by a standard ticket writer (imprinter), or, if hand issued, validated by a simple standard validator;
4. To eliminate competitive pressures by having the agency rules relating to delinquency and default administered by an impartial organization;
5. To eliminate considerable administrative detail from district sales offices, thereby freeing personnel for productive sales activity;
6. To eliminate considerable administrative detail from sales staff personnel, thereby freeing staff for creative sales and development work;

7. To minimize the burden involved in maintaining ticket inventories;
8. To gain the cost advantage incident to volume purchases of ticket stock.

B. SCOPE

While it is desired that the Plan be universal, and that the standard ticket for agents be acceptable by each ATC and IATA member airline, this Plan, pending endorsement by IATA, shall be mandatory only with respect to tickets sold by agents for air transportation wholly within the continental United States and Canada, and shall be optional with respect to on-line tickets for travel to or from points outside that area. IATA will have an opportunity to endorse the Plan and/or approve the ticket at its 1962 fall Traffic Conference meeting.

C. DEFINITIONS

1. The term "airline identification plate" means a plate, bearing the airline's name and code number, for use in a machine for the validation of tickets. The plate, when delivered to the agent, will also bear the agent's name, location and code number.

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2. The term "designated area bank" means a bank designated to receive and process sales reports and remittances from authorized agency locations in a designated geographic area, pursuant to the ATC Standard Ticket and Area Settlement Plan for Sales Agents: Provided, that no bank which has a Bank Travel Department shall be designated, or continue to be designated, as an area bank. (See region map indicating the location of designated area banks shown as Exhibit III.)

3. The term "Area Settlement Plan" means the utilization of the services of a bank located in a city in each area of the continental United States and Canada into which those countries will be divided for the purposes of:

a. Collecting funds realized by agents from the sale of air transportation, and

b. Distributing such funds to those airlines whose identification plates were used to record the sale of such transportation.

4. The term "AFAC" means the Airline Finance and Accounting Conference.

D. STANDARD FORMS AND EQUIPMENT

1. General: The actual selection of the hardware and hardware supplies will not be made until the Plan has been adopted and a firm effective implementation date has been established. This will provide an opportunity to explore the feasibility of renting the equipment should rental be less expensive, or should it become advisable to await the development of more desirable equipment than is now available but is now in the planning stage. Exhibit IV attached summarizes, reasonably and comprehensively, the findings up to the present time of a special subcommittee of the Interconference Committee.

2. Standard Ticket: Each agent will be supplied with stocks of standard one, two, and four coupon tickets¹ which will have space reserved for the agent to insert the name of the issuing airline through use of the airline identification plate. The tickets will be purchased by the AFAC from at least two manufacturers, thus assuring that adequate supplies at competitive prices will always be available, and will be distributed to agents by the AFAC. The standard ticket is illustrated in Attachment "B" to the Resolution to Implement Area Settlement Plan. Estimated ticket prices, based upon tentative bids from ticket manufacturers, are attached as Exhibit V.

3. Miscellaneous Charges Order: Each agent will be supplied with stocks of standard one coupon miscellaneous charges orders under the same procedures as apply to the issuance of standard tickets.

¹ For the initial implementation period, the Committee plans to avoid purchasing three coupon tickets to determine whether or not a three coupon ticket will be required.

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4. Agency Sales Report Form: This form will be purchased and distributed to agents by the AFAC. It shall be in a form prescribed by the Interconference Committee and shall be published in the Trade Practice Manual. An illustration of the form is contained in Exhibit VI attached.

5. Industry Approved Validator or Ticket Writer: Each agent will be required to lease or purchase an industry approved validator or ticket writer, which is available in volume quantities in the form and at prices shown in Exhibit IV. To minimize cost, the validator or ticket writer will be leased or purchased and offered to agents by the AFAC.

6. Airline Identification (Validator) Plate: Each airline will furnish at no cost to the agent an airline identification (validator) plate to each agent it authorizes to issue its tickets and other traffic documents. A sample of such airline identification plate is shown at the bottom of Attachment "B" to the Resolution to Implement Area Settlement Plan. A statement of plate specifications is contained in Exhibit IV attached.

E. PROCEDURES AND RESPONSIBILITIES - AIRLINE FINANCE AND ACCOUNTING CONFERENCE

1. Ticket Stock

The Secretary-AFAC will arrange to have ticket stock delivered on request of each agent on the basis of four months' forecast of needs. The mechanics of distributing and accounting for agents' ticket stocks will be developed by the Secretary-AFAC in collaboration with the printers, with the understanding, however, that the numerical sequence of ticket numbers allocated shall be controlled by the Secretary-AFAC.

The Secretary-AFAC will prorate the cost of the standard tickets and other forms required for operation of the plan among the airlines which participate in the program in proportion to the number of tickets settled under the plan for each such airline to the total number of

tickets so settled. The cost of the initial stock of tickets will be divided among the airlines which participate in the plan in proportion to the number of tickets sold by agents for each such airline during the month of June 1961 to the total number of tickets sold by sales agents during that period.

AFAC will purchase the standard tickets, as required, from at least two printing companies. The orders will be divided between the ticket suppliers with the understanding that, if one is unable to supply tickets at any given time, a continuous supply of tickets will be available from the other(s). Arrangements will be made with the printing companies whereby the tickets will be mailed directly to the agents by the printer, as authorized by the Secretary-AFAC. At the close of business each month the printing company will bill the Secretary-AFAC for the tickets supplied to agents during the month. A statement must show the number of tickets distributed and the contract price per thousand, including handling and mailing charges.

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2. Miscellaneous Charges Order

The supply, control and cost recovery for miscellaneous charges orders will be administered by the Secretary-AFAC, under the same procedures as apply to the standard ticket.

3. Agency Sales Report Form

This form will be purchased and distributed to agents by AFAC, and the cost thereof will be assessed to the airlines in the same manner as the cost of the standard ticket.

4. Industry Approved Validator

Each agent will be required to lease or purchase an industry approved validator or ticket writer, which will be offered to agents by AFAC in order to minimize cost.

5. All tickets and other forms furnished the agent by AFAC will remain the property of AFAC and will be held in trust by the agent.

The issuance, control and removal of such forms will be the responsibility of AFAC. Notices of suspension, default and late remittances will be promptly given to the Secretary-AFAC and, under certain specific conditions covered by the resolutions, the Secretary will immediately arrange to withdraw all forms issued by him.

6. The Secretary-AFAC will receive information from the area bank relative to late remittances, improper sales reports, failure to pay, and skipped tickets, and will promptly transmit such information to the Executive Secretary-ATC for appropriate action.

7. The AFAC will maintain a Clearing Account and an Operating Account at each area bank. The Clearing Account will be credited with:

- a. Funds received from agents on the day they are received;
- b. Funds transferred from the Operating Account to make up shortages of \$25.00 or less in an agent's remittance;

and will be charged with:

- a. Transfers to the Operating Account of any overages in agents' remittances;
- b. Funds distributed to airlines in payment of sales made by agents.

The Operating Account will be credited with:

- a. Working funds;

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- b. Overages in agents' remittances;
- c. Funds received from an agent in reimbursement of an earlier shortage of \$25.00 or less;
- d. Funds received from the airlines in reimbursement of shortages of \$1.00 or less;

and will be charged with:

- a. Funds transferred to the Clearing Account to make up shortages in agents' remittances;

b. Funds returned to an agent in reimbursement of an earlier overage in his remittance.

8. The AFAC will adhere to the following procedures in the collection of short remittances from agents:

- a. If the shortage is less than \$1.00, it will be treated as an operating expense and shall be reimburseable as such by the airlines;
- b. If the shortage is in excess of \$1.00 but \$25.00 or less, the Secretary-AFAC will proceed to collect it from the agent, but, if the agent's Agreement is cancelled, the shortage will be charged back to the airlines which participated in the remittance in the ratio of the aggregate of the sales listed for each airline in the applicable sales report to the total sales reported in that report;
- c. If the shortage is in excess of \$25.00, the bank will distribute the amount actually received to the airlines listed in the applicable sales report in the same manner as shortages in excess of \$1.00 but \$25.00 or less are charged back to the airlines.

Note: Dollar figures appearing in Section E.7. and 8. above have been inserted for illustrative purposes only. Actual minimum and maximum limitations will be established later.

F. PROCEDURES AND RESPONSIBILITIES - AIR TRAFFIC CONFERENCE

1. ATC will maintain a current Agency List which shall show for each authorized agency location a five-digit code number. Such number will be assigned in cooperation with IATA.

2. ATC will supply to each designated area bank a list of each agent in such area bank's territory, including name, address and numeric code designator. The bank will be notified of any changes with respect to agencies located within its territory.

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3. ATC will advise each agent and agency location to which bank it must report and remit, including the full name and address and any other mailing particulars which may be requested by the area bank.

4. While the selection and retention of agents procedures will not change as a result of the Plan, there will be some basic administrative changes. In the case of a late remittance, the area bank notifies the Secretary-AFAC, who promptly notifies the Executive Secretary-ATC. On receipt of such notice, the Executive Secretary-ATC shall immediately send to such agent by certified or registered mail, return receipt requested, a letter, and shall promptly so notify all members. A monthly recap of notices of late remittances will be published in the same manner as under present procedures. If an agent appears on such monthly list four times during a consecutive twelve-month period, ATC will promptly advise the Secretary-AFAC who will promptly withdraw all tickets and other forms supplied by him to such agent.

G. PROCEDURES AND RESPONSIBILITIES — SALES AGENTS

1. Each approved agency location will lease or purchase an approval validator/s or ticket writer/s.

2. Such agent or agency location will order from the Secretary-AFAC supplies of standard tickets or other forms based upon a projected four months' period, and such standard tickets or other forms shall be held in trust until issued to the agent's clients to cover transportation purchased, or until otherwise satisfactorily accounted for to the carrier or the Secretary-AFAC.

3. In selling air passenger transportation on the lines of the carrier, the agent shall issue only standard agent's tickets or other forms supplied it by AFAC (except as provided under the provisions of the Supplemental Sales Agency Agreement — see paragraph a. and related comments on page 12 hereof).

4. In selling air passenger transportation hereunder, the agent will use, in the following order of preference, the airline identification plate of air carriers which are parties to the Air Traffic Conference Agency Resolution:

a. The carrier through which the reservation is made, provided such carrier participates in the routing, or

- b. The carrier performing the first sector of the transportation, or
- c. If the agent does not have either plate specified above, the plate of any carrier which is scheduled to participate in the transportation, or
- d. If the agent does not have any of the plates specified above, the agent may use the plate of any other carrier.

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5. The agent will report and remit three times each month for all transportation and ancillary services sold under the Plan. The first report will include all such sales during the first ten days of the month, the second will include all such sales during the second ten days of the month, and the third will include all such sales during the remaining days of the month.

The agent will cause each such report, together with auditor's coupons, supporting documents and remittances, to be delivered to the designated area bank not later than the close of banking hours on the third working day, excluding Saturdays, Sundays and local legal holidays, following the last day of the period covered by the report. (It is provided, however, that the agent will be deemed to have complied with this requirement if the envelope containing such report is postmarked not later than midnight of the second such working day.)

6. The agent will include the commission and net remittance on the auditor's coupon for each ticket he issues. The auditor's coupon will be submitted with the sales report.

7. The agent will use the approved sales report form which will be obtained from the Secretary-AFAC. The remittance check accompanying a sales report will be made payable in accordance with instructions given from time to time.

8. When a sale is made against a Universal Air Travel Plan card, the auditor's coupon and the original and duplicate of the Transportation

Receipt will be mailed to the ticketing airline on the date of sale. The triplicate of the Transportation Receipt will accompany the ticket sales report, and the ticket form and number will be listed in numerical sequence on the sales report. The code letters "UATP" will be recorded in the net remittance column on the ticket sales report. If the transaction is commissionable, the amount of commission will be deducted from the remittance. Other credit sales will be handled in a similar manner.

9. If agents are authorized to make refunds, in accordance with paragraph 10 of the Sales Agency Agreement, the amounts of the refunds will be recorded on the report and deducted from the remittance.

10. Agents will record tickets on the sales report in strict numerical sequence according to form numbers. Single flight coupon tickets will be recorded first, followed by two and four-coupon tickets, other traffic documents, refunds, and commissions on credit sales. This may be accomplished by using a separate sheet of the sales report form for each ticket form number. This would permit the posting of sales each day. Refunds and commission on credit sales transactions must be listed on the last pages of the sales report.

11. If an agent maintains an account with a no par bank, he will pay the service charge so that the net remittance received by the area bank will be the amount due for the reporting period.

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H. PROCEDURES AND RESPONSIBILITIES — AREA BANKS

1. Designated area banks shall be located in the following cities:

Atlanta, Georgia	Miami, Florida
Chicago, Illinois	New York, New York
Dallas, Texas	San Francisco, California
Los Angeles, California	Toronto, Ontario, Canada
Vancouver, British Columbia, Canada	

They will record the names and addresses of all agents in their territories from which reports will be received.

2. The designated bank will be advised the exact reporting requirements, and shall adhere to the following procedures in performing its duties under the terms of this Plan:

a. At the close of business on the fourth bank working day following the last day of the period covered by the report, excluding Saturdays, Sundays, and Federal and state legal holidays, the bank will notify the Secretary-AFAC of the name and sales agent code number of any agent which failed to report in accordance with prescribed procedures.

Envelopes for those reports received by the bank after the close of business on the day prescribed as set forth above will be date-stamped by the bank and forwarded to the Secretary-AFAC on the date such reports are received.

The bank will maintain a record for each agent showing the agent's name, address, code number, date the remittance is received by the bank, and remarks such as delinquencies, date notifications sent to AFAC, etc. The agent's sales reports will be kept on file for a period of two years and then destroyed by the bank. The Interconference Committee and the bank will jointly agree on any standard forms, to be originated or processed by the bank, that may be required to account for administration of the program. Once each month the bank will advise the Secretary-AFAC of the numbers of auditor's coupons processed for each airline during the preceding month.

b. Upon receipt of a remittance check, the bank will remove the remitting agent's record from an "open" file. The sales report will be inspected to verify that the ticket numbers listed thereon are in numerical sequence; that the numbers of the auditor's coupons are in corresponding numerical order; and that the total shown on the sales report is the same as the amount of the remittance check. Overages and shortages will be processed in accordance with Section E., subsections 7. and 8.

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The auditor's coupons attached to each sales report will be inspected to verify that the validation on each form is dated in the current sales period. The bank will notify the agent of any skipped numbers on the face of the report or discrepancies in the validation dates on the auditor's coupons. A copy of such notice will be mailed to the Secretary-AFAC for appropriate action. (A special form will be furnished to the bank by the Secretary-AFAC for this purpose.) The Secretary-AFAC will develop procedures designed to account for skipped ticket numbers, and to assure that tickets are properly validated within the reporting periods. Voided tickets will have an airline designator indicated on them by the agent, and will be sorted by the bank and forwarded to the appropriate airline for inspection and destruction.

If an agent's sales report is in balance but is improperly prepared, the bank shall notify the Secretary-AFAC, who will be responsible for referring such irregularities to the Executive Secretary-ATC for corrective action.

If an auditor's coupon listed in a sales agent's report does not accompany the report, but payment for such ticket is included in the agent's remittance, the bank will prepare a "dummy" ticket coupon for such missing auditor's coupon, and distribute the funds in accordance with the agent's report. The same procedure will be adhered to in the event the agent fails to support an entry for refund in his report.

c. The bank will sort the auditor's coupons by airline code number, will distribute the net remittance due each airline from the agent, and will determine that the agent's remittance balances with the total of the individual transactions reported.

d. Usable funds generated by the agents and forwarded to area banks will be available to the airlines not later than the second working day following date of deposit of agents' remittances. Such

usable funds will be disbursed in accordance with instructions given to the bank by individual airlines.

The original bank credit advice will be forwarded airmail to the airline. The duplicate of the credit advice, together with the auditor's coupons and supporting documents, will be forwarded daily by regular mail to the airline. One copy of the bank proof machine tape will be dated showing the reporting period covered by the transactions.

e. The bank will group agents' reports in "batches" or "keys" in such manner that the following information could be reproduced in the event auditor's coupons are lost in the mail between the bank and the airline's office or a distribution discrepancy occurs:

[38]

- (1) Ticket form and number,
- (2) Name and number of the agent who issued the ticket, and
- (3) Airline to which payment was sent.

Insofar as the airlines are concerned, auditor's coupons need not be microfilmed.

f. In the event a sales agent's remittance check is returned to the bank, the bank shall notify the Secretary-AFAC immediately. If payment of the check cannot be effected by the bank within three working days, it will charge the accounts of the airlines which received credit when the check was originally processed, and will so advise such airlines. Duplicate advices of the debits and the check will be forwarded to the Secretary-AFAC.

g. When the auditor's coupons are received from the bank, each airline may perform its audit or verification of the fares recorded on the tickets. In the event an error is discovered and it is necessary for an airline to correspond directly with the agent to make additional collection or refund, as the case may be, such adjustment will be processed through the bank on a standard form designed for the purpose. Recovery of unearned commission will

be claimed from the agent through the bank on the same form.

h. The accounting documents received from the agent in support of sales reports will be forwarded by the bank to the respective accounting departments of the participating airlines, or to such other offices as those airlines may direct, along with bank proof machine tapes and deposit advices.

3. The bank will arrange with each airline precisely how the per item service charge will be paid.

I. RELATED COMMENTS

1. The Committee has recognized, and taken steps to compensate for, any inequities that could arise as to ATC-only agents and ATC-only carriers, until such time as IATA recognizes the Standard Agent's Ticket for international interline transportation, or participates in the plan. For such reason, the Plan includes a Special Supplemental Sales Agency Agreement which may be executed between the carrier and the agent. Under the terms of the Special Agreement, the carrier is permitted to supply the agent with its tickets and other forms for the sales of air transportation and ancillary services not wholly within the continental United States and Canada. In brief, the execution of the Supplemental Sales Agency Agreement by a carrier with an agent maintains a status quo with respect to the agent's obligations and responsibilities to a carrier for the sale of air transportation and ancillary services which will be included under the scope of the Plan. A copy of the Supplemental Agreement is presented as Attachment "A" to the Resolution to Implement Area Settlement Plan.

[39]

2. The administrative costs of monitoring this program cannot be accurately ascertained prior to obtaining actual experience. Based on information known to date, the Committee believes that those costs will be less than the costs being borne by all carriers in carrying out their control responsibilities on an individual carrier basis.

Under the Plan the monitoring function will be delegated to the AFAC, and will include:

- a. Purchase and distribution of validators, ticket stock, miscellaneous charges orders, sales report forms, and other traffic forms;
- b. Maintenance of ticket stock, including MCO's and other traffic documents;
- c. Proration of costs to airlines;
- d. Investigation and settlement of:
 - (1) NFS checks,
 - (2) Out-of-period validations,
 - (3) No report, or late reporting practices,
 - (4) Improperly prepared reports,
 - (5) Skipped tickets,
 - (6) Reconciling bank accounts;
- e. Refinement and administration of the procedures for the area bank operation.

A Work Flow Chart has been included as Exhibit VII.

3. Cognizance has been taken for the desirability of an educational campaign to present the Plan to travel agents, and particularly to impress upon the agents the importance of filing all sales/no sales reports properly and promptly.

4. This Plan will not take effect until the applicable resolutions have been approved by the Civil Aeronautics Board pursuant to Section 412 of the Federal Aviation Act.

5. It is recognized that it will be desirable to implement the Plan in one area at a time. Accordingly, it is expected that, following approval by the Board, the Plan will be implemented first in the Chicago area, probably limited initially to the State of Illinois.

One reason for implementation of the Plan on an area-by-area basis is to facilitate any modification of the details of the procedures that may appear desirable in the light of experience. In the Committee's view, it is unlikely that any such modification would entail basic amendment of the draft ATC

[40]

Resolution, and, most particularly, the Sales Agency Agreement contemplated by the draft Resolution. It is recognized that such modifications as may be found desirable will most likely be in the areas of "internal" bank-airline procedures, forms, etc. It is believed that the draft Resolution is sufficiently comprehensive, and incorporates sufficient flexibility, as to allow for modification of the details of the "internal" matters without entailing repeated revisions of the Sales Agency Agreement.

Such implementation will take place not less than 90 days following Board approval, unless otherwise directed by the Conference, and shall proceed as rapidly as feasible.

Airline No. 1

Comparative Cash Flow Chart

Under Present and Various Proposed Reporting Requirements for AgentsAssumptions:

1. All agents take full advantage of any grace period.
2. Compensating balances are not a factor.
3. In bank plans, assume 2 work-day gap between receipt of money by bank and transfer to individual airlines.

WORKING SPECIMEN - Cash availability to Airline of Travel Agents'
April 1962 receipts

Receipts of	No. Days	Agt. Mails Check	Check In Bank	Day Airline Gets Money	Days Available	Money Days
BANK PLAN I - Report 10th - 20th - last day - 2 work days grace to mail check						
4/1 -4/10	10	4/12	4/13	(w) 4/17	29	290
4/11-4/20	10	(w) 4/24	4/25	4/27	19	190
4/21-4/30	10	5/2	5/3	(w) 5/7	9	90
						<u>570 (19)</u>
BANK PLAN II - Mail check Thursday of each week to cover previous week's business						
4/1 -4/7	7	4/12	4/13	(w) 4/17	29	203
4/8 -4/14	7	4/19	4/20	(w) 4/24	22	154
4/15-4/21	7	4/26	4/27	(w) 5/1	15	105
4/22-4/28	7	5/3	5/4	(w) 5/8	8	56
4/29-4/30	2	5/10	5/11	(w) 5/15	1	2
						<u>520 (17+)</u>
BANK PLAN III - Mail check Thursday of each week covering receipts through Tuesday						
4/1 -4/3	3	4/5	4/6	(w) 4/10	36	108
4/4 -4/10	7	4/12	4/13	(w) 4/17	29	203
4/11-4/17	7	4/19	4/20	(w) 4/24	22	154
4/18-4/24	7	4/26	4/27	(w) 5/1	15	105
4/25-4/30	6	5/3	5/4	(w) 5/8	8	48
						<u>626 (21-)</u>
PRESENT PROCEDURE - PLAN IV						
<u>Report 1st & 16th - check to be in carrier's hand on 6th calendar day</u>						
4/1 -4/15	15	4/21	4/23	4/23	23	345
4/16-4/30	15	5/6	5/7	5/7	9	135
						<u>480 (16)</u>

Money period ends - 5-15

(w) Intervening Weekend

Airline No. 2
Comparative Cash Flow Chart
Under Present and Proposed Reporting Requirements for Agents

Date	Actual Receipts	Proposed Plan	Additional Funds On Deposit	Accumulated Balances	
				Actual	Proposed
3/14	\$	\$ 388,297	\$ 388,297	\$	\$ 388,297
3/15			388,297		388,297
3/16			388,297		388,297
3/17			388,297		388,297
3/18			388,297		388,297
3/19	106,039		282,258	106,039	388,297
3/20	180,541		101,717	286,580	388,297
3/21	145,012		(43,295)	431,592	388,297
3/22	148,760		(192,055)	580,352	388,297
3/23	3,813		(195,868)	584,165	388,297
3/24		388,297	192,429	584,165	776,594
3/25			192,429	584,165	776,594
3/26			192,429	584,165	776,594
3/27			192,429	584,165	776,594
3/28			192,429	584,165	776,594
3/29			192,429	584,165	776,594
3/30			192,429	584,165	776,594
3/31			192,429	584,165	776,594
4/1			192,429	584,165	776,594
4/2	17,846		174,583	602,011	776,594
4/3	44,158		130,425	646,169	776,594
4/4	77,702	388,296	441,019	723,871	1,164,890
4/5	176,649		264,370	900,520	1,164,890
4/6	151,710		112,660	1,052,230	1,164,890
4/7			112,660	1,052,230	1,164,890
4/8			112,660	1,052,230	1,164,890
4/9	94,154		18,506	1,146,384	1,164,890
4/10	11,009		7,497	1,157,393	1,164,890
4/11	437		7,060	1,157,830	1,164,890
4/12	174		6,886	1,158,004	1,164,890
4/13	6,886			1,164,890	1,164,890
	<u>\$1,164,890</u>	<u>\$1,164,890</u>			
		Accumulated balances		\$19,059,975	\$24,074,404
		Average balances		614,838	776,594
		Average actual balance			<u>614,838</u>
		Average daily increase-			
		Proposed plan over actual receipts			<u>\$ 161,756</u>

Airline No. 3
Comparative Cash Flow Chart
Under Present and Proposed Reporting Requirements for Agents

Date	Actual Receipts	Proposed Plan	Additional Funds On Deposit	Accumulated Balances	
				Actual	Proposed
3/14	\$ 253	\$ 3,468,851	\$ 3,468,598	\$ 253	\$ 3,468,851
3/15	65,198		3,403,400	65,451	3,468,851
3/16	540,237		2,863,163	605,688	3,468,851
3/17	12,887		2,850,276	618,575	3,468,851
3/18			2,850,276	618,575	3,468,851
3/19	814,560		2,035,716	1,433,135	3,468,851
3/20	1,038,389		997,327	2,471,524	3,468,851
3/21	1,177,795		(180,468)	3,649,319	3,468,851
3/22	813,791		(994,259)	4,463,110	3,468,851
3/23	168,618		(1,162,877)	4,631,728	3,468,851
3/24		3,468,851	2,305,974	4,631,728	6,937,702
3/25			2,305,974	4,631,728	6,937,702
3/26	149,776		2,156,198	4,781,504	6,937,702
3/27	353		2,155,845	4,781,857	6,937,702
3/28	9,478		2,146,367	4,791,335	6,937,702
3/29	384		2,145,983	4,791,719	6,937,702
3/30	5,511		2,140,472	4,797,230	6,937,702
3/31	17		2,140,455	4,797,247	6,937,702
4/1			2,140,455	4,797,247	6,937,702
4/2	147,840		1,992,615	4,945,087	6,937,702
4/3	513,758		1,478,857	5,458,845	6,937,702
4/4	930,891	3,468,851	4,016,817	6,389,736	10,406,553
4/5	1,082,125		2,934,692	7,471,861	10,406,553
4/6	1,522,246		1,412,446	8,994,107	10,406,553
4/7	15,599		1,396,847	9,009,706	10,406,553
4/8			1,396,847	9,009,716	10,406,553
4/9	993,592		403,255	10,003,298	10,406,553
4/10	1,766		401,489	10,005,064	10,406,553
4/11	353,517		47,972	10,358,581	10,406,553
4/12	46,641		1,331	10,405,222	10,406,553
4/13	1,331		-	10,406,553	10,406,553

\$10,406,553\$10,406,553

Accumulated balances

\$163,816,719

\$215,068,762

Average balances

5,284,410

6,937,702

Average actual balance

5,284,410

Average daily increase-

Proposed Plan over actual receipts

\$ 1,653,292

Airline No. 4

Comparative Cash Flow Chart

Under Present and Various Proposed Reporting Requirements for Agents

Reporting Period	Weekly - Monday through Saturday Sales					3 Times Month 10th, 20th, Last	Present Plan
Grace Period	1 Day	2 Day	3 Day	4 Day	5 Day	2 Day	

1. Average number of days held by agent before mailing

6 7 8 9 10 7 1/2 9

2. Average mailing time

1 1/2 1 1/2 1 1/2 1 1/2 1 1/2 1 1/2 -

3. Average day lag between due date and receipt by airline

3

4. Average delay in availability after receipt by banks

2 2 2 3 3 2 2

Total Days Float

9 1/2 10 1/2 11 1/2 13 1/2 14 1/2 11 14

Average Dollar Float (Assuming a \$2,000,000 per calendar day agency sales volume)

\$19,000,000 \$21,000,000 \$23,000,000 \$27,000,000 \$29,000,000 \$22,000,000 \$28,000,000

Value @ 5% per annum

950,000 1,050,000 1,150,000 1,350,000 1,450,000 1,100,000 1,400,000

Net gain (loss) per year from present reporting schedule

450,000 350,000 250,000 50,000 (50,000) 300,000 -

NOTES:

1. Average Days Sales Held by Agent - Based on calendar days in the reporting period, plus the number of calendar days allowed for preparation and transmittal. Example - 7 day reporting + 1 business day to

Airline No. 4 - Comparative Cash Flow Chart (cont'd)

First Day's Sales held	- 9 days
Second Day's Sales held	- 8 "
Third "	- 7 "
Fourth "	- 6 "
Fifth "	- 5 "
Sixth "	- 4 "
Seventh "	- 3 "
Total	<u>42</u>

Divided by 7 days in reporting period = 6 average days.

2. Average Mail Time to Bank (Under Proposed Plan)

Assumption is made that reports from agents in the Bank city and surrounding cities will be received in 1 day. Those from outlying cities will take 2 days. We assume an average of 1 1/2 days.

3. Average Delay in Receipt by Sales Office (Present Plan)

This was determined by actual measurement of all agency remittances for 1 reporting period. On an average the total funds were available at bank in 3.1 days.

4. Available After Bank Credit

Proposed Plan - Allows the Bank 2 days for processing and distribution of funds to various airline accounts.

Present Plan - Funds are credited to our accounts in local banks and transferred by Depository Transfer Check to Area Bank where they become available one day later, but one additional day must be allowed for collection. We calculate this to be an average of 2 days.

5. General

All calculations are based on calendar days. Weekends and holidays have not been excluded.

STATEMENT ON AREA BANK COSTS

Excerpt from letter from Continental Illinois National Bank and Trust Company of Chicago

We also believe that, since the various airlines will find it necessary to match flight tickets with the auditor's coupons, a number of control procedures, which might be considered non-banking functions, shall eventually be found to be unnecessary. It is also recognized that many of the steps performed in connection with each flight coupon are closely related to the procedures we normally perform in the handling of a deposited check. Therefore, in the interest of providing the greatest amount of cooperation to the industry, we are happy to participate in this experimental operation and will be pleased to use as a price per coupon the same price that we would use for a deposited item, namely, 2-1/2 cents.

Under our present analysis formula we would be able to handle 72 coupons for each \$1,000 average collected balance per month. In addition to the foregoing unit price, we should like to make arrangements with the respective airlines whereby we would be compensated for the postage expenses incurred in the mailing of the bulky packages of coupons and other material to them. We are quite willing, during the three month trial to be unconcerned with any added unit price in the interest of achieving the greatest possible amount of knowledge from the experiment. In this way, we feel that the bank will not be exposing the industry to a price which might not be realistically initiated and upon which unjustified conclusions might be drawn. At the same time, we believe it will be of mutual benefit to avoid a price which each might ultimately find difficult to accept.

It is our understanding that you would like us to share with you certain information about various phases of the operation which we gather from our detailed study, in order that you may further evaluate each of the elements now included in the proposal. In an effort to be as helpful as possible to the industry, we shall be pleased to cooperate in this manner.

JA 53

5 EXHIBIT VI

AGENCY SALES REPORT FORM

Page ___ of ___ pages

Agency Name DOE TRAVEL SHOPAgency Number 59412 Report Number 4Street Address 123 ELM STREETPeriod Covered 2/1/62 To 2/10/62 Incl.City and State DALLAS, TEXAS

TICKET FORM AND NUMBER	REMITTANCE NET AMOUNT	TICKET FORM AND NUMBER	REMITTANCE NET AMOUNT	TICKET FORM AND NUMBER	REMITTANCE NET AMOUNT
Balance Forward		Balance Forward	2,001 32	Balance Forward	3,404 29
002 193 123 456	90 80	011 290 223 462	173 21		
007 193 123 457	109 10	001 290 223 463	96 42	REFUNDS/CREDIT SALES	
016 193 123 458	70 17				
001 193 123 459	125 60	006 391 673 491	260 21	002 290 123 457	(19 36)
015 193 123 460	176 48	010 391 673 492	173 48	026 494 536 723	(126 70)
026 193 123 461	150 27	002 391 673 493	72 10	007 290 123 456	(30 40)
041 193 123 462	50 21	391 673 494	101 D		
024 193 123 463	20 10				
014 193 123 464	UATP	005 494 536 721	216 26	Commission Credit Sales	
030 193 123 465	19 20	006 494 536 722	36 48		
109 193 123 466	210 96	026 494 536 723	374 81	014 193 123 464	(9 36)
001 290 223 456	75 41			RECALL COMMISSIONS	10 00
002 290 223 457	96 80				
016 290 223 458	127 80				
001 290 223 459	73 25				
015 290 223 460	236 75				
026 290 223 461	368 42				
TOTAL	2,001 32	TOTAL	3,404 29	TOTAL	3,208 47

Sales Including Tax \$ 3,614.88

Less: Commissions Regular Sales \$ 210.59

UATP Sales 9.36

Refunds 176.46

Net Adjustment Dr/Cr Memos 10.00 406.41

Net Remittance \$ 3,208.47

Date Report Prepared Feb. 12, 1962

Agent's Signature John Doe

1. Agent's Sales Report shall be printed in size 8 1/2" x 11", including three columns for listing ticket numbers, which provide for reporting about seventy-five items on one page.
2. Tickets shall be listed in numerical sequence with refunded items at the close of the report.
3. Ticket 014 193 123 464 indicates UATP item. Non-commission items shall be recorded in sequence with no amount shown in column captioned "Remittance Net Amount".

55G

JA 54

[55G]

BON VOYAGE TRAVEL AGENCY, INC.

Chicago 4, Illinois

September 20, 1962

Civil Aeronautics Board
Washington, D.C.

Gentlemen:

The Standard Agents Ticket and Area Settlement Plan Submitted by the Domestic Airlines to the Board for consideration is a matter of concern to all Travel Agents.

While we have no particular objection to the plan, we feel all ticket stock holders should be required to participate, not just the Travel Agent.

The fact that the airlines must have a early return for tickets issued is understandable, but to allow Agents a three day grace while Commercial Accounts are allowed a thirty to sixty day credit is unjust and in a sense discriminatory, (as stated in a recent CAB examiners report)

A standard proposal, which would include all segments of the industry and impose the same regulations is the only fair solution.

We therefore petition the Board to equalize the credit period for ALL ticket stock holders.

Sincerely,

J. A. Heitzinger,
President
BON VOYAGE TRAVEL

[received Sep. 25, 1962]

[55H]

FOUR WINDS TRAVEL SERVICE PERSONALITY TOURS

September 28, 1962

Mr. Richard Saunders, Director-Agencies
Air Traffic Conference of America
1000 Connecticut Avenue, N.W.
Washington, 6, D.C.

Dear Mr. Saunders;

On June 5, 1962, I wrote you as follows, "I note that ATC is seriously considering weekly reports and payments from the various approved travel agencies and, in conjunction therewith, a much more simplified and combined form. This, of course, is most commendable and apparently will help ease the red tape paper work for all concerned. However, it would seem that having these reports submitted on a weekly basis rather than the current twice a month basis nullified the time-saving element. On behalf of our agency and, I am certain, every other travel agency, I would like to request that these reports be kept on a twice monthly basis. We can then truly be appreciate of some good, solid business-like efficiency and cooperation".

Now, frankly, to give this matter even more thorough consideration and examination, I would like to suggest and request that ATC view various travel agencies and their respective owners in the same light that other important and large business operate, namely, that certain said travel agencies, upon proper financial and credit status, be allowed to pay their bills to the airlines on a standard monthly basis.

It seems that all travel agencies are suspect due to the improper financial dealings of the minority. I just can't understand why Harold Jovien, the individual who receives credit from every sound source on a 30-day basis, including, if he desired, an air credit card, cannot, as the operator of a travel agency creating, selling and servicing many thousands of dollars of airline business monthly, receive similar credit. And I would be willing to back up this credit status with a proportionate bond. I feel our financial and credit basis should entitle us to the same

55H

monthly report privilege extended Thomas Cook, Ask Mr. Foster, Fugazy and American Express.

[55I]

September 28, 1962
Mr. Richard Saunders
Air Traffic Conference of America
page 2. .

I learned through the trade papers we have neither fish nor fowl in the latest contemplated ruling defining three times monthly reporting — on one hand your easing of the red tape so prevalent in this industry and on the other hand your adding to the expenditure of our valuable creative time 50%.

We must again ask you and CAB to reconsider this decision letting the report period remain at least on the semi-monthly basis and furthermore giving very serious consideration to monthly reports available to all under certain standard and business-like credit conditions.

Would you please be sure to bring this letter to the attention of all of those involved in making this decision. It would be most appreciated by our independent travel agency operation.

I would appreciate a reply as soon as possible as to the reception of this letter by you and your associates and just how I might proceed on the request of monthly reports.

Thank you.

Cordially,

Harold Jovien,
Four Winds Travel Service
and
Personality Tours.

[Received Oct 2, 1962]

[56]

ASK MR. FOSTER TRAVEL SERVICE
New York 20, N.Y.

October 5, 1962

Mr. James A. Saltsman
Chief-Agreements Section
THE CIVIL AERONAUTICS BOARD
Washington, D.C.

Dear Mr. Saltsman:

Please see the attached letter that we have just sent to the Executive Secretary of ATC which spells out our thoughts on the standard air ticket and Area Bank Settlement Plan as filed by them to the CAB.

We would be pleased to speak further on these items should it be necessary, and we would appreciate hearing further from you should you wish to hear our comments.

Sincerely yours,

Thomas C. Orr
Executive Vice President-Secretary

[Received Oct. 8, 1962]

[57]

ASK MR. FOSTER TRAVEL SERVICE
New York 20, N.Y.

October 5, 1962

Mr. John A. Lundmark
Executive Secretary
AIR TRAFFIC CONFERENCE OF AMERICA
1000 Connecticut Avenue, N.W.
Washington 6, D.C.

Dear Mr. Lundmark:

To follow up on the discussions that our Comptroller, George Schyling, had with you in Washington on September 19, I am outlining below some of the points that ASK Mr. FOSTER would like to make as comments on the standard air ticket and Area Bank Settlement Plan as filed by ATC with the Civil Aeronautics Board.

We are objecting to the Plan as presented to the CAB since it does not apparently make any mention of a provision for travel agents with more than ten branches. As you know, we operate more than 40 offices across this country and Canada and find the present method of reporting airline tickets satisfactory.

We presently report on a calendar month basis, being allowed a ten day grace period for payments to be received by the various carriers. We have been operating under this provision since inception of the Plan some 15 years ago. We would like to have this same type of provision included in the new Plan as submitted to the Board.

Our internal control and accounting procedures have been centralized in New York City and here we audit, check, compile and prepare the remittances of our entire sales organization for the carriers. A two-day grace period as mentioned in the proposed Plan would be obviously impossible to meet in the light of our procedures.

Further to the above, we would find the cost of validators and the computation of airline commissions due to be an extra burden in our expense of doing business. We hope, of course, that any newly designed ticket would offset this item.

We would find the present ATC Plan as proposed to be very difficult to live with and would likely be forced to appeal to appropriate channels for help should it not be modified to make allowances for companies of our type.

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We will appreciate your consideration of our thoughts. We also appreciate the time you have given in seeing our Mr. Schyling in Washington.

Very truly yours,

Thomas C. Orr
Executive Vice President-Secretary

[Received Oct 8, 1962]

[59]

ASK MR. FOSTER TRAVEL SERVICE
New York 20, N.Y.

November 8, 1962

Mr. James A. Saltsman
Chief-Agreements Section
THE CIVIL AERONAUTICS BOARD
Washington, D.C.

Dear Mr. Saltsman:

To follow up on our telephone conversation of this date, I am writing you to remind you that we have not changed any of our views as expressed in our letter to ATC of October 5th, a copy of which was sent to you.

We have a letter from ATC dated November 2 in which the last paragraph states:

"After full review of your comments and suggestions, the Conference concluded that the Plan should remain as unanimously adopted, without discriminatory treatment as between agents".

We feel that the Plan, if put into effect in its present form would be discriminatory since it covers all agents — those with only a few locations and those with more than ten, which is the case with ASK Mr. FOSTER. We now have 39 appointed locations and we find the grace period impossible to abide by and suggest that for companies with branches numbering over ten that a grace period of ten or more days be allowed. The other items mentioned in my letter of October 5th remain.

We would be pleased to come to Washington to make further comments on our position should the Board feel that it is necessary. Thank you for your cooperation.

Very truly yours,

Thomas C. Orr
Executive Vice President-Secretary

[Received Nov. 8, 1962]

[60]

[Civil Aeronautics Board,
Received Nov. 20, 1962]

PAUL REIBER
Twelfth Floor, Federal Bar Bldg.
1815 H St NW
Washington 6, D.C.
November 20, 1962

Civil Aeronautics Board
Universal Building
Connecticut at Florida Avenues, N.W.
Washington, D.C.

Re: Opposition of Fugazy Travel Bureau, Inc. to
ATC Agreement Establishing Area Settlement
Plan

Gentlemen:

The Air Traffic Conference of America (ATC) filed amendments to its Agency Resolution with the Board in September, 1962 which revise the relations between airlines and travel agents so greatly that some of the changes should be approved only after a hearing. The amendments are filed as an agreement among the airlines under Sec. 412 of the Federal Aviation Act. They will not become effective until approved by the Board. While they are called agreements, they are in effect a code of regulations of the travel agency business which go to the heart of that business.

Fugazy Travel Bureau, Inc. (Fugazy) objects to only two provisions of the proposed Area Settlement Plan (ASP). One provision would reduce the present remittance period of 30 days for multi-location agents to 10 days. This would apply to sales of U.S.-Canada air transport, but leave the 30 day period of remittances for sales of air transport between U.S.-Canada on the one hand and foreign countries on the other. The second provision to which Fugazy objects reduces the period for preparing and submitting reports from six to three days.

These two provisions if adopted would require such drastic changes in the organization and operation of Fugazy as to destroy its present business. The new agreement should not be approved unless it

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continues the currently effective reporting requirements as they apply to Fugazy.

In support of that position, we will discuss first the contributions of Fugazy as a multi-location travel agent, second how ASP in its present form would make impossible the present operation of Fugazy, and third, why the proposed agreement with the two objectionable features should not be approved without a hearing.

- I. The destruction of the multi-office travel bureau would deprive the travelling public, the travel industry, and the airlines of services not otherwise available.

There are services to the travel industry and to the travelling public which are provided only by travel agents, or at least they are provided in the most effective way at present by travel agents. We will not elaborate on these services, but will draw your attention to those services which are best provided by travel agents with multi-locations.

Multi-location agencies offer the economies of scale.

The most important contribution made by multi-location travel agents to the public and the travel industry is the improvement in utilization, increase in services, and lower costs.

A hotel in Spain or in Michigan, a tour operator in Jamaica or in San Francisco can operate more efficiently and economically when it or he has the assurance that during a given season there will be a steady and known flow of guests and patrons. Those assurances can best be given by multi-location agents whose activity in 18 or more markets in the U.S. can generate volume travel.

The travelling public who make up the guests and patrons also benefit in charges and services. At the hearing requested, Fugazy will show that multi-office agents can and do obtain better rates and more services for their customers.

Multi-location travel agents offer services possible only with multi-branches under central control.

Large travel programs, involving as many as 3000 passengers originating in 100 points can be serviced by multi-location travel

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agents. One example will illustrate type of evidence Fugazy will adduce at a hearing. One large U.S. manufacturer, in providing an incentive tour from the U.S. to Europe, sought to move 3200 dealers originating in a hundred cities and towns. Charter flights were arranged, so one round trip U.S.-Europe was operated daily over a period of 75 days from 17 cities in the U.S. Full loads were arranged at the 17 cities by moving the dealers into the 17 embarking cities. Fugazy's 18 offices in the U.S. with representatives on the spot, but centrally coordinated, and three offices in Europe made service possible which single location agents could not provide as effectively.

Fugazy can provide central billing for travel services for multi-branch corporations. Thus a corporation with offices located in several states with varied travel needs can have them serviced by a travel agent with multi-locations. These services can be screened by a central office to eliminate cancellations and adjustments, and to submit one bill.

One of the critically weak features of travel agency industry generally is the lack of training to maintain high standards of service. This has been a concern of the industry for a number of years. It is particularly difficult for the smaller agent to develop resources for training. The multi-location agents can and do provide training programs to improve and maintain desirable service to the public.

Multi-location travel agents offer advantages to airlines

Instead of dealing with 18 separate travel agents, the airlines can deal with one and receive one remittance audited and corrected.

Multi-location travel agents, by providing service on a national scale can develop volume travel. A national manufacturer for example, can provide incentive rewards for his dealers by giving gold watches — or gilded tigers — or he can give them a trip to Europe or to Puerto

Rico. Being ready to provide the service for a massive tour, the multi-location travel agent can provide a service particularly effective to promote volume travel.

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The benefits the multi-location travel agent provides for the airlines is evident when his performance is tested by the criteria emphasized by the airlines. In the far-reaching Board investigation of travel agency matters, Docket 8300, the ATC listed the following criteria:

"Agents and Agency locations are included on this list only after evaluation of the following criteria:

1. "a satisfactory credit standing";
2. "a reputation for ethical practice in the sale of passenger transportation and services related thereto";
3. "suitable premises";
4. "the willingness, ability and activity of the agent in selling air passenger transportation, particularly vacation, pleasure, and tour travel."
5. "the need of (airline) members for agency representation in the area involved"; and
6. "the number of authorized agency locations in the area involved"; and
7. (in the case of agents already on the list) "the experience of the members with such agent and the agent's record in performing its Sales Agency Agreement with the members."

- ATC Brief, October 8, 1957

Of the seven listed, only five are applicable here, but as to these critical five, the multi-location agent compares favorably with other agents.

Sales volume of the multi-location agents make a truly significant contribution to airline revenues. A hearing would reveal that the four or five multi-location travel agents may well generate one half of the total sales of air transport by all travel agents. Thus, in the Agency

Investigation, the ATA stated in its Exhibits (ATA Ex. No. 10, p. 1) that agency sales totaled \$237,941,240. The sales of multi-location agents may well total \$100,000,000, or almost half. At least Fugazy's total sales of \$28,000,000 for the year ending is a significant contribution—about 10% of total sales as reported by the ATA for all travel agents.

The significant contribution to air transport volume by Fugazy's gross sales is clear from a comparison with sales by

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selected airlines. Fugazy's gross sales exceeded the sales of any individual local service airline, as reported for the year ending December, 1961. Fugazy's gross sales of \$28,000,000 was more than the passenger revenues of Bonanza, Central, Frontier, Ozark, and Lake Central added together. Fugazy's sales of travel service were larger than the revenues of any two of the three largest local service carriers, Allegheny, North Central, and Mohawk, added together.

It may be contended that all of Fugazy's customers would have moved by air transport, so the airlines would have had this revenue in any event. That is difficult to prove. What can be shown, however, is that a large volume of travel spending is discretionary. That is, the money could be spent for non-travel or in nearby hotels as contrasted with distant resorts which involved greater travel. Fugazy is prepared to show how agents promote greater use of air transport.

Most important, why not let the customer decide whether to deal with the travel agent. Isn't the agent's catering to the needs of the travelling public one of the benefits of free enterprise which should be preserved as Vice Chairman Murphy indicated in his speech on October 23, 1962:

"The public interest requires, in the view of Congress, that when these competitive air carriers get together on matters of service and operations, then the scrutiny of the Civil Aeronautics Board is warranted to insure that the traveling public will not be denied the advantages of our competitive free enterprise system. Our basic inter-

est in any agreement resulting from such collaboration is to prevent monopolistic practices operating to the detriment of the users of air transportation."

Transportation sales by Fugazy, when channeled into airline revenues are "golden eggs." ATC proposes that the "golden eggs" be laid, not monthly as is true now, but every ten days! Like earlier eager egg collectors, impatience here would kill the coveted goose.

- II. The proposed agreement makes it impossible for Fugazy to continue its travel bureau as it has been conducted with CAB and ATC approval.

We will discuss first the practices now followed by Fugazy, and secondly show how these will be adversely effected, in fact destroyed by the proposed agreement. Fugazy, for more than 15 years,

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has performed travel services at from 1 to 21 locations. The present office locations of Fugazy are:

New York (3)	Los Angeles, California
Hollis, New York	San Francisco, California
Beverly Hills, California	Nanuette, New York
Buffalo, New York	Stamford, Connecticut
Chicago, Illinois	Syracuse, New York
Dallas, Texas	Washington, D.C.
Minneapolis, Minnesota	Akron, Ohio
Philadelphia, Pennsylvania	Rancho Cordova (Sacramento)
	California
London	
Paris	
Rome	

Each of these locations reports to the central office where the reports are audited, co-ordinated and corrected to reflect accurate remittances and to meet required controls of ticket stock. The reports are audited, co-ordinated and corrected to reflect accurate remittances and to meet required controls of ticket stock. The reports are verified and

consolidated and remitted to the airlines on a monthly basis within a six-day period after the close of the monthly period.

This period for reporting remittances is authorized by Sec. XI of ATC Agency Resolution, Resolution No. 80.10, page 15 (Effective 6/20/62) which provides that: "No member (of the ATC) shall authorize an agent to remit at intervals less frequent than the first and sixteenth days of each calendar month, except that an agent which operates at least 10 authorized agency locations may be authorized to remit at intervals not less frequent than once a calendar month." This exception for multi-location agents has been in effect since 1948 and has been used by Fugazy for more than three years.

Fugazy is allowed six days in which to deliver the remittances to the airlines by Sec. VII C of Resolution No. 80.10 (Page 11, effective 1/30/62) which provides (in part): "If the remittances due any member from any Agent is not received by such member within 6. days . . . after the date on which such Agent is required to remit . . ." the agent shall be subject to certain sanctions.

These provisions are abolished by ASP. Paragraph 18 of ASP repeals Sec. XI authorizing remittances for 30 day periods. Paragraph 23 of ASP revises existing paragraph 5 of the Agency Resolution to require remittances 3 times per month which must be "delivered to a bank designated by the ATC not later than the close of banking hours on the third working day . . ."

To gather into one central office the proposed remittances of 20 other offices, audit, verify, correct, and consolidate these into a single remittance cannot be done in three days. Even if each branch office could complete its report in one day (for such reports ATC currently allows 6 days) and the mails could be relied upon to deliver to the central office in one additional day, only one-half day is allowed for consolidation. This is true because the only time allowed on the third day is until the close of the banking day, which is usually at 2 p.m. Obviously, little if any consideration was given to the operating requirements of the multi-office travel agent.

To comply with ASP in its present form would destroy
Fugazy as it is now operated.

If Fugazy tried to comply by having each location report separately, Fugazy would suffer the following detriments. Fugazy would have to (a) discard a central accounting system recently put into effect at a cost of \$80,000. (b) employ from one to three auditors at each location to prepare reports directly to the airlines; (c) give up central control of remittances and refunds which are essential to provide responsible accounting to the airlines and to Fugazy's customers.

ASP, as it is now proposed, would require four reporting periods per month, as compared with the one monthly reporting period currently in effect. At present, Fugazy reports monthly to all carriers. As proposed, Fugazy would have to report three times monthly to the ATC and once monthly for transportation "to or from points outside the continental U.S. and Canada." ATC recognized that IATA has not approved an area settlement plan, so it permits in paragraph 20 of ASP a Special Supplemental Sales Agency Agreement which permits remittance on a monthly basis (proposed Sec. XV c (4)). This multiplication of the reports required would add exorbitant expense to Fugazy.

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One of the important features of Fugazy organization is the emphasis on sales staff at branch offices and centralized control of audits and reports. These features, so fundamental to Fugazy success, would be eliminated.

The only reason given by ATC for refusing to continue the present 30-day remittance period is the suggestion that there would be discrimination between agents. (See paragraph 3 of the attached letter from ATC Executive Secretary.) At no time during the more than a decade that the practice was in effect has the ATC raised the issue of discrimination. The remittance periods were agreed to because of the peculiar needs of the multi-location agents. Those needs continue.

All that we ask for here is the continuance of a practice long in effect. We can find no better statement of a principle to guide the airlines on this question than the principle recommended to the Board by 12 of the largest U.S. airlines in a recent brief to the Board:

"Consistency is a highly desirable goal in any business, but particularly so where the business is subject to regulation . . . Practices that have been engaged in by the industry for many years and have been approved (many times) . . . should not be lightly cast aside. Long established practices should be viewed with an eye toward their condonation rather than their condemnation." (In the matter of the Passenger Credit Plans Investigation, Doc. No. 10917, Jan. 15, 1962, p. 4)

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III. The new agreement should not be approved without a hearing.

Admittedly, Section 412, pursuant to which the contested agreement is filed, does not direct the Board to grant hearings prior to approving agreements. But the absence of a statutory direction is not decisive. The key to whether a hearing should be granted is whether the action proposed would destroy an interest in business or property. If the action takes a property right or adversely effects a business interest, a hearing should be granted.

Thus, in Standard Air Lines v. CAB, 177 F 2d 18 (1949) the issue was whether an exemption could be suspended without a hearing. Here, too, there is no provision in Sec. 416(b) that a hearing be granted. Nevertheless, it was held that a hearing was required because the suspension would destroy property. The court said, at p. 20:

"The controlling practicality, in our view (as to whether there should be a hearing) is that the suspension would destroy property, not a license property but investment and business property. The Government cannot make a business dependent upon a permit and make an otherwise unconstitutional requirement a condition to the permit."

And in Cook Cleland Airways, Inc. v. CAB, 195 F 2d 206 AD 1 2d 51, (1952), where a hearing was not required to suspend an exemption, the court said:

"We do not have here any question which might arise if the applicant had developed a business or acquired property by reason of the original registration or the original permissive regulations of the Board. cf. Standard Air-Lines v. CAB 177 F 2d 18 (1949)"

In American Air Transport, Inc., et al v. CAB 1 Ad L 2d 296 98 F Supp 660 (1951) the Board sought to reduce the scope of an exemption (termed a "license" by the court) by an amendment of a regulation without a hearing. The court required a hearing, saying,

" . . . It would appear that plaintiffs have substantial investments, serious contractual commitments, and have developed valuable business and good will, all of which will be jeopardized unless the regulation is voided by the court. . ."

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The Board has followed this standard in considering agreements. In the Local Cartage Agreement Case, 15 CAB 850 (1952) and the North Atlantic Tourist Commission Case, 16 CAB 225 (1952) hearings were granted. Even in those cases where the Board has contended that no hearings are required on agreements filed under Section 412, the substantive defense was that a hearing was not requested as in Six Carrier Mutual Aid Pact, Order No. E , 9 Ad L2d 786; or that a hearing was provided but not availed of by the party. See CAB brief in McManus v. CAB (No. 26, 934 2d cir) August 1962.

There are numerous cases arising before other administrative agencies involving the question of when hearings are required. The rationale that best explains the results reached is that where a business or property interest would be adversely effected by the agency action proposed, a hearing should be granted.

Justice Frankfurter summarized the cases as follows:

"The construction placed by this court upon legislation conferring administrative powers shows consistent respect for requirement of fair procedure before men are denied or deprived of rights. From a great mass of cases, running the full gamut of control over property and liberty, there emerges the principle that statutes should be interpreted, if explicit language does not preclude, so as to observe due process in its basic meaning . . . Fair hearings have been held essential . . . to deprive persons of property . . ." Joint Anti-Fascist Refugee v. McGrath, et al., 341 U.S. 123 * AD 2d 74 (1951) pp. 94-5.

As early as 1908 the Supreme Court made clear the necessity for a hearing before a government agency could act to deprive a person of property.

In Garfield v. Goldsby, 211 U.S. 249 (1908), an Indian had his name listed as a member of a tribe. Such listing gave him property rights. The secretary of Interior deleted the name without notice and hearing. The court said, p. 262:

"In the extended discussion which has been had upon the meaning and extent of constitutional protection against action without due process of law, it has always been recognized that one who has acquired rights by an administrative or

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judicial proceeding cannot be deprived of them without notice and an opportunity to be heard. The right to be heard before property is taken or rights or privileges withdrawn, which have been previously legally awarded, is of the essence of due process of law. It is unnecessary to recite the decisions in which this principle has been repeatedly recognized. It is enough to say that its binding obligation has never been questioned in this court."

It has been contended that under the Administrative Procedure Act hearings are to be held only when "required by statute," and therefore are only to be had when a statute specifically requires them. That argument has been brushed aside by the Supreme Court.

"We think that the limitation to hearings required by statute in Sec. 5 of the Administrative Procedure Act exempts from that section's application only those hearings which administrative agencies may hold by regulation, rule, custom, or special dispensation; not those held by compulsion . . . They exempt hearings of less than statutory authority. We would hardly attribute to Congress a purpose to be less scrupulous about the fairness of a hearing necessitated by the Constitution than one granted by it as a matter of expediency." Wong Yang Sung v. McGrath, 339 U.S. 33, 50 (1949)

There is no question that Fugazy has a business interest that will be drastically effected — if not destroyed — by the proposed agreement. Since Fugazy has operated multi-location agencies, it has remitted on a monthly basis. Its business is built on that basis. Its service to customers depends on it. Its accounting and control system will have to be replaced if the remittance period is changed.

It is equally clear that Board action permitted Fugazy to develop and only by Board action will Fugazy be destroyed. The Board approved the agreement in 1948 (an amendment to the Agency Resolution) which specifically authorized remittances monthly, and only by Board action, in the form of an approval of the proposed agreement will that provision be deleted. ASP specifically provides in paragraph 39 that only upon approval by the Board will ASP take effect.

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Conclusion

The new agreement if it becomes effective will strike down a business organization. This business has been a legal calling. It has made substantial contributions to airline revenues. It has performed outstand-

ing services to the public. It has developed valuable business and good will.

If the Board wishes to give further consideration to provisions with such effects, Fugazy should be granted a hearing.

Respectfully submitted,

/s/ Paul Reiber

Attorney for Fugazy Travel Bureau, Inc.

cc: Mr. Jack M. Slichter
Executive Secretary, ATC

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[Received Nov. 30, 1962,
Civil Aeronautics Board]

Wilkinson, Cragun & Barker
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Wash. 6, D.C.

Civil Aeronautics Board
Universal Building
Washington 25, D.C.

Re: ATC Area Settlement Plan Resolution,
Filed With the Board, September 7, 1962

Gentlemen:

We are pleased to submit the following comments on behalf of the American Society of Travel Agents, Inc. (ASTA), representing approximately 1,600 active members operating more than 2,000 agency locations throughout the United States and Canada.

ASTA has long and consistently supported all reasonable efforts by the air carriers to further the development of air passenger transportation by more effective and efficient procedures and techniques. In ASTA's opinion the Area Settlement Plan proposed by the Air Traffic Conference is, in principle, a constructive effort to accomplish this objective. However, the resolution as submitted to the Board contains certain provisions which we feel make impossible the successful achievement of the over-all objectives of the proposal.

Two aspects of the resolution to which we particularly object are first, the requirement that travel agents remit carrier funds three times per month and that such remittances be made within a two or three day "grace period"; second, the requirement that agents sign a special Supplemental Sales Agency Agreement and maintain ticket stock of individual domestic carriers.

For the sake of clarity, we have enclosed as Appendix A a section-by-section analysis of the resolution as it was introduced by the Air Traffic Conference. The following is a more detailed explanation of ASTA's two major objections to the resolution.

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I. ATC Resolution 80.15, par. 5, provides that travel agents shall remit funds collected pursuant to the Sales Agency Agreement on the 1st and 16th of each calendar month. ATC Resolution 80.10, sec. 7, par. c, provides that these funds should be received by the ATC members within six days after the last day of the reporting period.

The Area Settlement Plan would change the remittance procedures to require an agent to remit three times each month. The first report including all sales during the first 10 days of the month, the second, all sales for the second 10 days of the month, and the third, all sales during the remaining days of the month. Remittances would have to be postmarked by midnight of the second working day following the end of the reporting period if sent by mail, or delivered to the Area Bank by close of banking hours on the third working day following the end of the reporting period. Therefore, the frequency of remittance and reporting is increased from 24 per year to 36 per year, an increase of 50%, and the length of time during which remittance must be made is decreased from six days following the reporting period to two or three days, depending upon the procedure used to remit the funds. While we realize that fewer reports will have to be completed, the number of entries on each report may well be increased.

It is obvious that the foregoing change would be extremely burdensome to the travel agent. The travel agent's clerical and administrative work would be increased and he would receive no additional compensation. In fact, his already meager compensation, derived from a 5% commission, would be further reduced due to additional administrative costs. It is further obvious that this increased burden and expense imposed upon the travel agent is purely for the benefit of the ATC members and those banks designated by the ATC as Area Settlement Banks.

In addition to the increased administrative costs and work imposed upon the travel agent occasioned by the tri-monthly reporting requirements, there is the very important consideration that travel agents would frequently be required to pay the carriers for the sale of such tickets long before the travel agent actually obtains payment from the customer who utilizes the ticket. It has been estimated that one-third of all retail trade is done on a credit

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basis.^{1/} Many travel agents, in their efforts to remain competitive and productive in the merchandising of travel on behalf of the air carriers, have adopted the procedure of issuing tickets and subsequently billing clients for the cost of such tickets. In order to maintain this accepted practice under the proposed Area Settlement Plan Resolution, it would be necessary for agents to maintain at their own expense sufficient working capital to carry these accounts for approximately 30 days.

It is interesting to compare, that while the ATC proposes that travel agents remit all funds for all tickets sold at the end of each 10-day period that the average elapsed time between ticket sale and receipt of payment under credit plans participated in by the domestic trunk carriers is 53.4 days!^{2/}

It is interesting to also note that the carriers are constantly encouraging the sale of air tickets on credit through such schemes as UATP cards, block ticketing, commercial accounts, tickets by mail, fly-now-

pay-later plans, etc. At the same time, by this resolution the carriers would very seriously hamper the travel agents' efforts to promote and sell air transportation. If travel agents must labor under the burden of remitting to the carriers every 10 days, then ASTA insists that all who purchase tickets on credit be required to remit to the carriers under identical terms.

Good business practices and sound merchandising dictate that the air carriers should expand the length of the reporting period from the current 15 days to 30 days, rather than cut it to 10 days as is being proposed by this resolution. ASTA objects to this provision of the resolution and urges the Board to instruct the ATC to modify the resolution to provide that remittance may be made by travel agents not more than twice a month and preferably once a month.

- 1/ Initial Decision of Examiner Wiser, Passenger Credit Plans Investigation, Docket 10917, p. 23.
- 2/ Initial Decision of Examiner Wiser, Passenger Credit Plans Investigation, Docket 10917, p. A-8.

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In this connection, we would like to point out that under the CAB approved bonding resolution, the travel agent is being required to incur an expense ranging from approximately \$100 up to approximately \$725 to secure a bond for the benefit of the ATC members.^{3/} Since this bond is a prerequisite to remaining on the ATC-approved list after January 1, 1963, ASTA is unable to understand why the ATC is compelling travel agents to remit three times per month, when the funds are perfectly safe while in the custody of the agent as a result of the bond requirement.

Reasonable reporting requirements of once or at most twice a month would free the agent of burdensome administrative duties and give them an opportunity to devote more time and effort to accomplish their true goal in the development and expansion of the air passenger market.

In the event that the Board rejects ASTA's proposal that the resolu-

tion be modified to provide a monthly or semi-monthly reporting by the agents to the Area Settlement Bank, then ASTA must insist that the length of time permitted for actual remittance be extended from two working days if mailed, three working days if delivered, to at least three working days if mailed and five working days if delivered to the Area Bank. This modification to the resolution would assist the travel agent who is already operating under burdensome administrative procedures, and would in no way inhibit the effectiveness of the over-all resolution. The modification would mean that the Area Bank would receive the funds on the 14th or 15th of the month for a reporting period ending on the 10th of the month rather than on the 13th or 14th of the month for the same reporting period.

II. Another aspect of the resolution which ASTA considers unacceptable is that which requires the signing of a "Special Supplemental Sales Agency Agreement". The burden imposed by this requirement to maintain a separate supplemental agreement as well as separate ticket stock for domestic carriers, in addition to the standard ticket stock, would offset the benefit which would be derived from the standard ticket.

3/ A minimum bond of \$10,000 is required and the lowest generally available premium is approximately \$10 per thousand dollars. Since the premium rate ranges to \$12.50 per thousand and an agent could be required to purchase up to a maximum of \$50,000 bond, the cost to the agent could amount to approximately \$725 per year.

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A Special Supplemental Agreement would require travel agents to maintain three, instead of the present two, sales agency agreements: the IATA Agreement, the Standard Ticket Agreement, and the Special Supplemental Agreement. Thus, agents would for the first time be required to maintain three types of ticket stock, one for the IATA carriers, the second for domestic carriers for international flights involving domestic carriers, and a third, the standard ticket stock. Rather

than reporting on the 1st and 16th of each month to the ATC and IATA carriers they would have to report on the 1st, 10th and last day of the month to ATC and the 1st and 16th to ATC carriers under the Supplemental Agreement, as well as on the 1st and 16th to the IATA carriers.

Unless an agreement is reached between IATA and ATC to the effect that IATA will at least honor a standard ticket if this resolution is implemented, the total resolution is ineffective. The failure of ATC and IATA to agree concerning the standard ticket is no fault of the travel agent. There is clearly no justification for imposing on the travel agent the burden of assuming additional work and responsibility resulting from this disagreement. ASTA requests the Board to issue a show cause order directed at IATA carriers to compel them to justify their reported refusal to honor a standard ticket if one is implemented.

The foregoing has been a discussion of what ASTA considers to be two of the most serious defects found in this resolution. In addition to these objections and the other reservations detailed in Appendix A, we consider it essential to the success of this program that ASTA have an opportunity to review and evaluate in advance the ticket forms, reporting forms, etc., to be used in the implementation of this program. In this connection, ASTA considers it extremely important to have the opportunity to meet with and assist the ATC and airline people charged with the implementation of the program.

The several recommendations contained herein would, if adopted, make the Area Settlement Plan more

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meaningful and effective, and so benefit the traveling public as well as the air carriers and the travel agency industry.

Copies of this letter are being sent to the Air Traffic Conference.

Respectfully,

Wilkinson, Cragun & Barker,
Attorneys for the American
Society of Travel Agents, Inc.

By: /s/ Rocco C. Siciliano

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APPENDIX A — ASTA COMMENTS REGARDING
AREA SETTLEMENT PLAN RESOLUTION
CAB 5044-A87 et al.

ASTA does not intend to object to the contents of the following paragraphs of "Resolution to Implement Area Settlement Plan," (CAB 5044-A87) filed by the Air Traffic Conference with the Board on September 7, 1962: pars. 1-6, 8-13, 18, 19, 21, 25-30, 32, 35, 36 and 37.

With respect to the remaining paragraphs we would like to make the following comments:

Par. 7 is not consistent with Agreement CAB 5044-A58 tentatively approved by the Board, which provides that an agent or agency location would not be removed from the Agency List unless it was without appointment by at least one member for a period of three consecutive calendar months. The Board in Order E-18716 recommended that this three-month period be extended to one year. This paragraph merely provides that "if all members who have appointed an agent cancelled such appointment, the name of the agent shall be removed from the Agency List". This inconsistency with CAB Order E-18716 should be corrected.

Par. 14-B provides that if an agent remits by check to an ATC member and the check is dishonored by the drawee's bank because of insufficient funds, the member must immediately notify the Executive Secretary by telegraph. The Executive Secretary, in turn, shall immediately notify all members by telegraph who have appointed such an agent. This appears unduly harsh in that it does not require either the carrier or the Executive Secretary to first check with the agent involved to bring this matter to his attention.

It is well known that a bank might mark a check dishonored for a variety of reasons, many of which are not the fault of the agent. In order to assure that the innocent agent is protected we consider it necessary that the member and/or the Executive Secretary first contact the agent involved and give him a period of not less than 24 hours to rectify the situation before transmitting any information to other ATC members.

Par. 15 provides that if an agent has failed to remit within ten days after such remittance was due, the Executive Secretary shall notify all members by telegram, and the Secretary of the AFAC shall immediately withdraw all ticket forms and exchange orders supplied by him. We see no justification for this ten-day provision since there is ample provision made elsewhere in the resolution to protect the carrier's interest. If fifteen days have expired after the remittance was due (see Par. 14-A), the agent is held in default by the Executive Secretary. If an agent does not remit when due, then all members are notified that he is delinquent. Under this language, an agent could have his ticket stock removed for a 7-day period even though he was never held in default. Therefore, the 10-day provision is inconsistent and unnecessary and should be eliminated.

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Par. 16 provides that the Executive Secretary, upon the notification of delinquency by a member, shall immediately notify the agent, all ATC members and the International Air Transport Association. This is an overly harsh procedure, particularly in view of the fact that the "delinquency" of an agent would have a different meaning under this present resolution than it had in the past and than it has under the IATA Sales Agency Agreement.

We urge the Board to require the ATC to have an explanatory statement accompany all "delinquency" notices, advising all recipients, particularly IATA, of the new meaning of the term "delinquency."

We further request that the ATC Executive Secretary be obligated to immediately inform all those who receive delinquency notices that the matter has been rectified if and when such is the case. This notification should be by telegram, just as the notice of delinquency or alleged delinquency is by telegram.

Par. 17 provides that the Executive Secretary is to notify the International Air Transport Association whenever an agent has failed to remit

or "has remitted by check and such check was dishonored by drawee's bank because of insufficient funds". This, too, seems unduly harsh when one considers the many circumstances under which such a check could occur during normal business practices. We urge that this be amended to require the Executive Secretary to first check with the agent involved and provide a reasonable period, not less than 24 hours after notification, for the agent to rectify the situation. [See comments re Par. 14-B above.]

Par. 20 provides for a "Special Supplemental Agreement". For reasons we have outlined in our basic letter, this is objectionable to ASTA. Unless the IATA carriers, and particularly the American flag carriers participating in IATA, indicate that they will honor a standard ticket if one is introduced by the ATC, the standard ticket proposal loses whatever benefit it would otherwise provide. The existence of A Special Supplemental Sales Agreement would increase rather than decrease the work of the travel agent. It would increase the amount and types of ticket stock which the travel agent must keep on hand and the number of reports that he must make each month. Rather than reporting on the 1st and 16th of each month to the ATC and IATA carriers he would have to report on the 1st, 10th and last day of the month to ATC and the 1st and 16th to ATC carriers under the Supplemental Agreement, as well as on the 1st and 16th to the IATA carriers.

In addition to our opposition to the very existence of a Special Supplemental Sales Agreement, several provisions within the agreement are highly objectionable.

Par. C, subparagraph 4 of the new Sec. XV of Resolution 80.10 (paragraph 20 of the ATC filing) provides that all agents must remit twice a month except those agents with ten authorized agency locations which may remit once a month. This is discrimination in favor of large agencies. It has not been approved by the Board in the past and under no conditions should be approved at present.

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Par. 6 of the actual Special Supplemental Sales Agreement (Attachment A) provides that the already inadequate arbitration protection afforded agents in the basic Sales Agency Agreement is denied agents under the Special Supplemental Agreement. The ATC has not attempted to justify this denial of arbitration and we strenuously object to it.

Par. 22, subparagraph 1 makes reference to the Special Supplemental Sales Agreement and provides for the issuance of special ticket stock pursuant to this agreement. This points up the cumbersome procedures which would be necessitated by the Special Supplemental Agreement which we hope the Board will rectify.

Par. 22, subparagraph 4 requires the agent to procure at no expense to the carrier one or more validator machines. This requirement to obtain a validator machine is another in a long line of financial burdens being imposed by the carriers on the travel agent with no commensurate increase in compensation to the agent. Since the agents are required to obtain at their own expense a costly bond in lieu of the inexpensive trust account procedures, ASTA urges the Board to request the ATC to apply the amount of money collected in fees from the agents and credit it toward the cost of purchasing the initial validator machine.

Par. 22, subparagraph 6 precludes the issuance of ticket forms or exchange orders "at or through any other place of business" than that specified as a place of business" than that specified as a place of business covered by this agreement. In view of the Board's Order E-18746, August 29, 1962, authorizing the use of ticket delivery facilities at airports, we would request that this language be clarified to indicate that it does not pertain to the use of such ticket delivery facilities.

Par. 23, providing for collection and remittance, is treated in detail in our basic letter. We would like to reiterate that semi-monthly or monthly remittance requirements are justified by good business practices and would be beneficial and good promotion of passenger air traffic. If the Area Settlement Plan is implemented on the basis of a tri-monthly

reporting requirement, ASTA insists that the length of time permitted for the actual remittance following the end of the reporting period be extended to at least three working days if sent by mail, and five working days if delivered at the Area Settlement Bank.

Par. 24 pertains to the bonding requirement, under paragraph 5 of Resolution 80.15. Since many ASTA members operating in Canada have evidenced an interest in participating in the bonding program in lieu of the trust account, we would urge the ATC to make it clear that such Canadian agents may do so.

With respect to the bond requirement per se, we would like to emphasize that the difficulty of obtaining and the expense of maintaining a bond is causing ASTA some concern. It is quite likely that ASTA may want to comment at a later date on this subject.

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Appendix A, ASTA Comments, p. 4

Par. 33 provides for the existence of an Area Settlement Plan Committee of the ATC. We urge that this Committee, in its efforts to implement the Area Settlement Plan, coordinate closely with ASTA representatives. We ask that ASTA representatives have an opportunity to evaluate the standard form or forms, agency sales reports, standard ticket stocks, validating equipment, and other clerical devices to be used in implementing this plan.

With respect to the standard ticket itself, ASTA recommends that the auditor's coupon contain a section to reflect the amount of commission due the agent on each sale.

According to Paragraph 39 and a letter from the ATC to the Board, dated November 20, 1962, this plan will be reviewed after a period of initial experience in a single bank area "before the Plan is expanded to nation-wide coverage." The ATC further states that the review of the plan after the initial experience will be "to evaluate cost experience and degree of attainment of objectives." Since the ATC is appar-

ently reserving final judgment on this plan until after this "pilot project", ASTA will do likewise and file subsequent comments.

One final procedural point we would like to raise is that the difficulty we experienced in attempting to fully analyze the effect of this complex resolution of Agreement CAB 5044, leads us to suggest a change in the filing procedures. We recommend that future filings by the ATC to amend existing or pending resolutions contain

- (1) the resolution in effect at the time of the filing,
- (2) the resolution as it would be if all amendments were approved, and
- (3) the pending resolution if all prior pending amendments and the instant amendment were actually approved by the Board.

Adoption of this procedure would insure more rapid constructive comments by all those interested.

[85]

AIR TRANSPORT ASSOCIATION OF AMERICA
Washington 6, D.C.

[Rec'd Dec. 13, 1962]

December 12, 1962

The Civil Aeronautics Board
Washington 25, D.C.

Re: ATC Standard Agents Ticket and Area Settlement Plan,
Agreement CAB No. 5044 - A87 et al

Gentlemen:

The sole purpose of this letter is to lay to rest the spectre — raised in ASTA's letter to the CAB, November 29, 1962 — that under the Standard Agents Ticket and Area Settlement Plan the Agents' "clerical and administrative work would be increased," and that this would be "extremely burdensome" to the Agents in respect to sales of tickets for domestic air transportation.

This undocumented allegation is a recurrent refrain in the letter of November 29. It appears, in varying phraseology, at least seven

times on pages 2 and 4 of the letter. But, despite the repetition, it is nowhere analytically supported. This, we believe, because it is not supportable.

The fact is that the Standard Ticket Plan will reduce the "clerical and administrative work" of the Agents with respect to domestic air transportation sales. This is readily apparent upon consideration of the three most salient areas where clerical and administrative work is involved, namely, (1) ticket stock, (2) incidence of reports and remittances for sales, and (3) content of the sales reports.

(In the ensuing discussion of these three areas, we will assume, for purposes of illustration, an Agent under appointment by ten ATC carriers. This probably approximates the average, although as to any given Agent the number of appointing ATC carriers could range as high as 28.)

(1) Ticket stock.

At present, the Agent normally holds, for domestic ticketing purposes, separate ticket stock for each appointing ATC carrier. Under the Standard Ticket Plan, he would hold one set of ticket stock for all ATC appointing carriers.

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Ticket stock is normally issued in booklets of one, two, three and four flight coupons. Each stock of forms is numbered in sequence, and must be issued and accounted for in the numerical sequence.

Thus, under the present system, an Agent under appointment by ten ATC carriers would hold some 40 separate numerical sequences of domestic ticket stock. His clerical and administrative work would include control of each of these 40 numerical sequences so that it is issued in numerical order and accounted for on the sales report in numerical order.

Under the Standard Ticket Plan, the Agent would hold only four numerical sequences of ticket stock for domestic sales.

Manifestly, the "clerical and administrative" burden under the standard Ticket Plan is substantially less than at present. Nothing in this area would support the ASTA allegations of "increased burden" on the Agent.

(Note: In an effort to achieve further simplification in this area, the three-coupon form will be omitted in initial experimentation with the Standard Ticket Plan. One objective will be to determine whether the savings incident to use of only the one, two and four-coupon forms are, or are not, counter-balanced by the necessity of accounting for increased numbers of voided flight coupons. For purposes of simplification, the above analysis gives no weight to the effects of reducing the number of ticket forms, either under the Standard Ticket Plan or on an individual-carrier basis. In either event, the relative administrative burden would be less under the Standard Ticket Plan.)

(2) Incidence of Sales Reports and Remittances.

Under the present system, the Agent must report and remit twice-monthly to each appointing carrier. Thus, an Agent under appointment by ten ATC carriers must complete and submit 240 sales reports, and 240 remittance checks, per annum.

Only 36 such sales reports, and remittance checks, would be required each year under the Standard Ticket Plan. For, under the Plan, the Agent submits thrice monthly a consolidated report, covering all sales of Standard Tickets for ATC carriers, and with each report a single remittance check covering such sales.

Here, again, there is no basis for asserting that the Standard Ticket Plan involves increased clerical and administrative burdens. The converse is manifestly the case.

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(3) Content of Sales Reports.

Likewise, there is no basis for contending that the proposed form of sales report will involve increased clerical or administrative work. Indeed, the Standard Ticket Plan contemplates use of a simplified sales

report form which will reduce the Agent's clerical and administrative chores.

Attached as Exhibit 1 is a copy of the proposed sales report form for use under the Standard Ticket Plan. Attached as Exhibit 2 is a copy of the ATC sales report form now in general use.

Comparisons are illustrative of the decreased administrative costs and work under the Standard Ticket Plan.

(a) Columns and basic entries

The proposed Standard Ticket Plan report form has two columns: one for the number of the ticket, the other for the net remittance.

The present sales report form has eleven numbered columns (one of which is subdivided into three). For each ticket sold, the Agent must select the proper columns and enter the number of the ticket, the fare (to be entered in the "no commission" column, or in the appropriate column according to applicable rate of commission), and the amount of tax.

(b) Determination of net remittance

Nor does determination of the "net remittance" amount for each ticket sold, under the Standard Ticket Plan, present any burdensome problem. For the bulk of domestic tickets — i.e., point-to-point transportation commissionable at 5% — the computation is done anyway at the time of sale, and shows on the face of the auditor's coupon. Thus, the Agent, at the time of selling a \$75 ticket, would consult a table, determine the 5% tax to be \$3.75, and enter in the prescribed boxes on the ticket:

Fare	\$75.00
Tax	<u>3.75</u>
Total	\$78.75

For sales report purposes, the commission is \$3.75, and the net remittance \$75. Or, if the ticket were commissionable at 10%, it is simple arithmetic to derive the figures "Commission — \$7.50" and "Net remittance — \$71.25."

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Under the present system, in order to determine the net remittance, it is necessary to total the tariff fare figures shown in each of the sales columns on each page of the report, compute the amount of commission, total separately the amounts shown in the tax column on each page of the report, and complete a reconciliation — the form of which is shown at the bottom of the present sales report, Exhibit 2 attached. (Note: a somewhat similar reconciliation form appears at the bottom of the proposed Standard Ticket Plan sales report form, Exhibit 1, attached. This form has not been finally adopted. Serious consideration is being given to either eliminating the reconciliation item, or making it optional for use if the Agent finds it helpful for his own purposes, since there is some question whether it serves any functional purpose under the Standard Ticket Plan.)

(c) Preparation of the sales report(s)

Under the present system, separate reports are prepared for each carrier. This means that, before work on the report form can start, auditors' coupons must be sorted by carrier, and arranged in numerical sequence for each carrier. In the case of our assumed typical Agent with ten carrier appointments, completion of sales report entries for a single day's sales may require entries on ten different report forms.

Under the Standard Ticket Plan, sorting by carrier is completely eliminated. Likewise eliminated is the need for stocking and processing separate report forms for each carrier. Entries can be made, regardless of carrier, on a single report form, with each ticket accounted for in numerical sequence as sold.

It is thus quite feasible, under the Standard Ticket Plan, for the sales report to be kept current — on a daily basis, if so desired — and transmitted to the area bank within a matter of hours after the close of each reporting period. And, quite clearly, there is less "clerical and administrative work" in preparing the single consolidated

sales report under the Standard Ticket Plan than in preparing separate sales reports for each appointing carrier.

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Against this background, it is readily apparent that there is no basis whatsoever for ASTA's refrain that the Standard Ticket Plan would increase the "clerical and administrative work" of the Agents. It is an unsupported, and unsupportable, assertion. The fact is that the Standard Ticket Plan will substantially reduce the administrative and clerical work of the Agents, insofar as sales of domestic air transportation over the routes of ATC member carriers are concerned.

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It is not clear whether this unsupported assertion reflects misconception of the actual work involved, is a rallying cry coined in hopes of wringing additional concessions on some features of the Plan, or is basically designed to create an atmosphere in which there will be greater receptivity to ASTA's arguments in other areas.

That the latter is a motivating factor is suggested by ASTA's eagerness to range afield from the issues presented by the Standard Ticket Plan and drag in assertions as to the "cost" of the Agents' bonding program. Thus, at page 3 of Appendix A to the ASTA comments of November 29, 1962, reference is made to "a long line of financial burdens being imposed" on Agents, with specific citation of "a costly bond in lieu of the inexpensive trust account procedures."

In the first place, we do not believe the bond is "costly." Bonds are now being offered, without collateral, at \$9 per year — or 75¢ per month — per thousand of coverage. For a representative Agent, carrying a \$25,000 bond, the cost is \$18.75 per month, or 1.5% of the commissions earned at the 5% rate on sales of \$25,000. Even if sales in a given month dipped to, say, \$15,000, that Agent's bond expense would be only 2.5% of commissions earned at the 5% rate. And, to the extent sales commissionable at 10% were included, these bond expenses as

percentage of commissions earned would be even smaller. It is readily apparent that bond premiums are a relatively insignificant business cost.

Likewise questionable is ASTA's present characterization of the trust account as "relatively inexpensive." This is diametrically opposed to the characterizations ASTA formerly used for the trust account, when its objective was to secure elimination. Indeed, we would be surprised if any significant number of the Agents presently taking out \$25,000 bonds have handled their trust accounts at an expense of less than \$18.75 per month.

A more balanced analysis of the relative costs and benefits of the bond and the trust account is, we believe, presented by the following excerpt from a letter from Mr. Newton E. Deiter, Continental Travel Service, Inc., Los Angeles, California, printed in the Travel Agent, January 10, 1962:

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"From the aspect of an agent who has voluntarily accepted bonding, the current dispute between ATC and ASTA on this subject seems to be inspired more by political than good business motives. Last year, this medium-sized Los Angeles agency secured, through our own insurance agent, a bond to the favor of the member carriers of the Air Traffic Conference of America. Within our own organization, we found that the savings in time and general accounting expense, as well as the cost of maintaining the separate trust account itself, far outweighed the cost of the bond itself. As an example, immediately upon securing the bond, we eliminated our airline trust account, the bank charges for the maintaining of this account, and all the internal bookkeeping necessary for transfers of funds into the account for remittance to the carriers. In addition, we found that all monies coming into our organization reflected favorably on our balance sheet, where in the

past the considerable sums deposited in the trust account never showed in our balance sheet. We have eliminated approximately \$30 a year in bank charges; we have eliminated 300 hours a year of accounting time at a conservative \$5 per hour cost estimate and, in addition, we have put ourselves in a much more secure cash-flow position.

'In order to be objective, it is necessary for us to have an appreciation of the carriers' problems. With constantly spiraling costs and lowering profits, it has become necessary for the carriers to assure themselves of profit, complete remittances and to eliminate to the greatest extent possible any chance of default.'

* * *

As stated at the outset, the sole purpose of this letter is to lay to rest the spectre, raised by ASTA, that the Standard Ticket Plan will burden Agents by added "clerical and administrative work." We regard it as important to nail this unwarranted allegation at the outset, so that further consideration and analysis of the Plan can proceed in a more objective manner.

Accordingly, we deliberately refrain from arguing, at this time, the merits and demerits of the technical objections and counterproposals advanced in the ASTA comments of November 29, 1962.

Very truly yours,

/s/ Clif Stratton, Jr.
Assistant General Counsel

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FOUR WINDS TRAVEL SERVICE
PERSONALITY TOURS
Hollywood 69, California

December 13, 1962

Mr. J. W. Rosenthal, Chief
Routes and Agreements Division
Bureau of Economic Regulation
Civil Aeronautics Board
Washington 25, D.C.

Dear Mr. Rosenthal:

I have been away from the office for a time and extremely busy on my return — therefore, please accept my apologies for replying so late to your October 24th letter which was in response to my October 18th letter and September 28th carbon of letter to ATC. I do greatly appreciate your request for further information from me regarding the remittances by travel agents to air carriers on a monthly basis rather than the proposed three-times-per-month basis or the current twice a month basis.

The proposed three times a month basis, to a considerable degree, nullifies the time saved with the single report and standard ticketing. Furthermore, both the twice a month and the three times a month reporting bases are quite unusual to the entire business world, which operates fundamentally on a 30-day or monthly basis.

It appears to me that — and I would like to make formal request for — a system should be instituted of monthly reports to carriers from certain agents, whether they have one office or dozens, who would qualify under very rigid credit and financial responsibility conditions. I feel that we are in this status, and this is normal and customary to practically every business in America. As a matter of fact, it is common not only to business operations, but also every sound business source extends this type of credit to individual consumers — such as myself — on a 30-day basis: witness the Air Credit Card, familiar to our industry.

I realize that in the handling of air tickets the volume of dollars is quite extensive, but in addition to strict financial responsibility conditions, the bond requirements are even further protection for the air carriers.

Lastly, anything that can be done should be done to relieve the travel agent of frequent red tape paper work in order that he may further devote his time directly to servicing the public and stimulating sales — resulting in mutual benefits to the travel agent, the air industry, and the public.

Thank you kindly for the serious consideration by the members of the C.A.B. and the opportunity to express our views in this matter.

Cordially,

Harold Jovien

[Received May 27, 1963]

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AIRLINE FINANCE AND ACCOUNTING CONFERENCE

A Division of Air Transport Association of America

1000 Connecticut Avenue, N.W.

Washington 6, D. C.

May 23, 1963

Mr. J. W. Rosenthal, Chief
Routes & Agreements Division
Bureau of Economic Regulation
Civil Aeronautics Board
Washington 25, D.C.

Re: ATC Standard Agent's Ticket and Area Settlement Plan, Agreement CAB No, 16874.

Dear Mr. Rosenthal:

Messrs. McCall and Stratton and I greatly appreciated the opportunity to confer with you and Mr. Wells on May 14th on the Standard Agent's Ticket Plan. Set forth below are remarks on some of the principal topics we discussed, particularly those where you or Mr. Wells indicated a desire for further information or explanation.

* * *

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5. Agents Operating Multiple Locations and Using Central Bookkeeping.

One problem posed by Agents with multiple ("branch") locations — the question of how and when to integrate them into the Plan as it is implemented area-by-area — has been dealt with above.

The Fugazy chain of travel agencies, in a letter to the Board dated November 20, 1962, raised two other problems involving multiple-location Agents. These are: (1) Agents operating 10 or more branches are presently permitted to remit once a month, instead of twice a month as required of ordinary Agents; Fugazy wants this special treatment to continue; and (2) an Agent operating multiple locations, and employing central bookkeeping (as distinct from having each branch report to the carriers independently) may find it difficult to meet the deadlines under the Plan for remitting to the area bank, in view of time lag involved in the branch office-to-central office-to-area bank sequence.

It will be noted that these are, in fact, separate problems, although there is some tendency to confuse them.

With respect to problem "(1)" — the special once-a-month remitting frequency for Agents with 10 or more branches — you have been previously advised that the Air Traffic Conference specifically considered the question at its Fall 1962 meeting, and "refused to continue preferential treatment with respect to remitting frequencies for certain large Agents, and determined that the Plan should go into effect as adopted, 'with no discrimination as between agents'". (See Mr. Stratton's letter to Mr. Rosenthal, November 20, 1962. So far as I know, this continues to be the position of the carriers.)

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With respect to problem "(2)" — the potential difficulties of multiple-location Agents using central bookkeeping — we recognize that some adjustment may be appropriate. As we pointed out to Mr. Wells,

this problem is not peculiar to the few Agents operating 10 or more branches, but could apply to an Agent operating as few as two offices (located, say, in New York and Los Angeles) and desiring to use a central bookkeeper to prepare sales reports and remittances.

It was suggested that multiple-location Agents could remit on the same dates applicable to other Agents, but on an estimated basis, subject to adjustment as the central bookkeeper completed his work. (A convenient deadline for such adjustment might be the date on which the next report/remittance is due.) I regard this as an excellent, and I believe practical, suggestion. This would preserve the principle that all Agents be treated on the same basis, and required to remit at the same time. As to the mechanics for determining the "estimated" remittance, there are several I would like to explore with the Interconference Committee — and with the Agents concerned, since it may well be that different bases may be appropriate for different Agents. The estimated remittance could be based on historical experience, including seasonality factors. It could, depending on the frequency of field office reports, and rapidity of delivery to the central office, be in part actual and in part projected (e.g., seven days actual, three days estimated). In some instances, it might be feasible for the field office to report and remit directly to the area bank, using a copy of its report to the home office, subject to adjustment after the home office had reviewed the report and made any necessary corrections.

Before leaving this subject, one other comment should be noted. One of the very largest Agents, operating well over 10 branches, has, I understand, dropped central reporting after trying it for some years, and reverted to having each branch report and remit directly to the airlines. For this Agent, I should think the Area Settlement Plan would pose no present problems. The Fugazy chain, on the other hand, evinces great interest in central reporting. We of the ATA staff are certainly interested in any reasonable approach that will permit Agents desiring to use central reporting to do so, without discriminating against other Agents in the matter of remittance dates.

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7. Reporting Twice a Month vs. Three Times a Month

As you may know, the carriers' original draft of the Standard Agent's Ticket Plan contemplated that Agents would report and remit weekly, the report to be placed in the mail on Friday and to cover sales through the preceding Thursday. Representatives of ASTA discussed this proposal with the air carrier committee in charge of formulating the Plan on May 8, 1962. The ASTA representatives detailed various objections to the weekly reporting proposal, both as to frequency of reporting and failure to coincide with month-end and year-end account closing practices.

In the light of that discussion, the carriers reviewed the matter and re-evaluated the cash flow, particularly as related to the bank charges for handling the Plan. The carriers concluded that the bank charges could be carried under the modified Plan, as presently before the Board, which requires reports on the 10th, 20th, and last days of the month, to be delivered to the area bank not later than the third working day after the close of the period, or to be placed in the mail on the second such working day.

This revised proposal, with the final report period coincident with the end of the month, disposed of problems with respect to month-end and year-end closing of accounts, so that phase of the matter is no longer of concern.

ASTA has nevertheless urged that the Board require further modification of the Plan, so that instead of three-times-a-month reporting, Agents' reports and remittances would continue to be made on the 1st and 15th of each month (with a few days allowed for the report to reach the bank).

As we have explained to you, the carriers' cash flow computations indicate that it would be impossible to accommodate ASTA's twice-a-month proposal because of the costs to the carriers of assuming the bank charges with no concurrent improvement in cash flow. The car-

riers' cash flow data has been submitted to you, and reviewed and analyzed by Mr. Wells. If we understood Mr. Wells correctly, his analysis confirms the carriers' conclusion that twice-a-month reporting would impose substantial additional costs on the carriers, and that the three-times-a-month reporting proposed in the Plan is as far as the carriers can go without incurring undue costs.

Against this background, the issue boils down to just this: Since the carriers cannot be expected to assume the additional costs incident to implementing the Plan on a twice-a-month reporting basis, the only practical choice appears to be three-times-a-month reporting, or abandon the Standard Agents Ticket.

I believe further progress toward accomplishment of the Standard Agent's Ticket Plan is possible only if all concerned start from this basic proposition.

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* * *

Conclusion

According to my notes, the foregoing letter covers in detail the particular problems raised during our discussion of May 14th. If it does not,

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or if other matters occur to you, I will be happy to submit any further information or data you think requisite.

I sincerely hope that, in view of the additional information herein supplied, the Standard Agent's Ticket Plan can be expeditiously processed, approved by the Board, and implemented.

Copies of this letter are being sent to counsel for ASTA and for the Fugazy agencies, who, as I understand it, are the only representa-

tives of Agents who have filed comments with the Board and copied in the ATA staff.

Very truly yours,

/s/ E. F. Kelly

Vice President-Finance
and Accounting

cc: Mr. Wells

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Order No. E-19945

ORDER DEFERRING ACTION ON AGREEMENT

The air carrier members of the Air Traffic Conference of America (ATC) have filed with the Board under section 412 of the Federal Aviation Act of 1958, as amended, (the Act) a resolution proposing significant changes in the business relationships between such carriers and their travel agents, which are currently governed by the ATC agency resolution and Sales agency agreement. The resolution, entitled "Standard Agent's Ticket and Area Settlement Plan" (Plan), by its terms is not to be effective until approved by the Board.

The more important provisions of the resolution are described in the appendix hereto. In brief, the Plan contemplates that an ATC-appointed agent would be required to use a single standard form of ticket in the sale of passenger air transportation performed wholly within the continental United States, Hawaii and Canada. Pending any endorsement by the airline members of the International Air Transport Association, the Plan would be optional for on-line tickets involving travel to or from points outside that area. Also, an agent would report sales and remit moneys due carriers to a designated bank in one of several prescribed geographical areas instead of using the ticket stock of, and reporting and remitting to, each of his carrier principals, as at present. The designated area bank (the bank) would review the agent's report, distribute the remittance due each airline, and notify the Secretary of the Airline Finance and

Accounting Conference (AFAC) of any failure of an agent to report or of other irregularities. The bank's service charges, estimated at 2.5 to 3 cents per auditor's coupon processed, and the cost of the standard ticket and other forms required would be borne by the members of ATC. On the other hand, the Plan would require agents to report sales and remit cash to the airlines more frequently than under present rules and to acquire from AFAC an industry-approved validator-ticket writer.

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A number of potential benefits have been ascribed to the Plan by ATC. Insofar as agents are concerned, ATC states that the Plan would serve to alleviate workload by reducing to one universal type the number of ticket forms to be stocked and issued; to centralize the source from which an agent must requisition ticket stock; to reduce to one the number of sales reports per reporting period; to centralize the location to which an agent must report and remit; to enable an agent to use the most modern ticket issuing devices, which save time and reduce costs; and to supply the agent with a versatile ticket form issuable by machine or hand as the tariff and itinerary dictates. The beneficial objectives of the Plan from the standpoint of the airlines are, according to ATC, to improve cash flow; to achieve greater uniformity and efficiency in the issuance of tickets; to provide ticket forms which are easy to issue and process; to eliminate competitive pressures by having the agency rules relating to delinquency and default administered by an impartial organization; to eliminate considerable administrative detail from sales offices, thereby freeing personnel for productive sales activity; to minimize the burden involved in maintaining ticket inventories; and to gain the cost advantage incident to volume purchases of ticket stock.

Comments on various aspects of the Plan have been received from the American Society of Travel Agents, Inc. (ASTA), Levittown Travel Center, Bon Voyage Travel Agency, Inc., Ask Mr. Foster Travel Service, Inc., Thomas Cook & Son, Incorporated, Fugazy Travel Bureau, Inc., Four Winds Travel Service and Personality Tours, Wilson Travel Service, and Sentinel Travel Bureau, Inc. Although such comments indicate interest in the adoption of efficient procedures, they reflect opposition principally to a proposed requirement, discussed *infra*, that agents report and remit three times per month with a grace period for such remittances of three (two, if mailed) working days. Aside from problems related to the speed-up in cash remittances, the agents maintain that the efficiencies of a single ticket and single settlement will actually be realized only if the ticket, in addition to use in domestic transportation, is accepted by all IATA carriers, since an ATC-only agent otherwise would have to maintain individual carrier ticket stock under a supplemental agreement provided for in the Plan or face some loss of international sales. The agents also express dissatisfaction over the fact that those who also represent IATA carriers would have to remit at different dates under this Plan than under their IATA arrangements. The agents object further to paying for the new type of validator-ticket writer and to certain other provisions or effects of the Plan.

It appears to the Board that the Plan in broad form, i.e., use of a standard ticket and centralized reporting, may represent a simplification of operating procedures and techniques, and the Board endorses the carriers' efforts to improve their own and their agents' operating efficiency. The specific procedures by which the intended objectives of the Plan are to be achieved, however, present substantial problems of concern to the Board and involve matters that affect significantly the interests of the carriers and the travel agency industry. The implications of the Plan thus warrant careful examination. Our purpose here,

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therefore, is to review various details and effects of the Plan with the view of eliciting additional information and/or clarification necessary to further consideration of the matter, or possibly revision of the agreement. Accordingly, the Board proposes to defer action on the agreement and provide an opportunity for all interested persons to present formally their views.

It may be noted initially that successful implementation of the Plan is premised in large part on its acceptance by IATA members. The Board has received no positive assurances, however, of any action by such carriers which would indicate affirmatively their intent to participate in the program, to accept the ticket where international interline connecting travel is involved, or otherwise to permit its use. Absent such participation or recognition, it seems clear that the stated benefits of the Plan will fall far short of realization. For example, agents representing ATC members only must, of necessity, continue to maintain the ticket stock of such carriers to sell international interline travel via non-ATC members, to report such sales separately to ATC members under schedules different from those involved in the Plan, and, where the agent also represents IATA carriers, to report and remit separately to them. 1/ Thus, it is not clear whether implementation of the Plan under these circumstances might not be less, rather than more advantageous to agents by comparison with the present system.

The program involves considerable uncertainty as to the timing and order in which the Plan would be implemented in the various bank areas. We note that an amendment (Agreement CAB 16874-A1) provides that the Plan will be implemented in one bank area at a time; 2/ that it will be reviewed 180 days after initial implementation to determine costs and degree of attainment of objectives; and that the Executive Secretary of ATC will recommend, within 255 days, expanded implementation, elimination, or modification of the Plan.

Any expansion beyond the initial bank area would have to be specifically authorized by vote of the members of ATC. Thus, it is conceivable that complete implementation of the Plan could involve a substantial period of time, during which period some agents would be subject to the present procedures while others would come under the more restrictive provisions of the Plan, e.g., the increased number of remittance periods. This situation might create serious inequities within the agency industry. The Board, therefore, wishes to be informed as to the order in which the carriers propose to implement the Plan in the various areas and the prospective time table.

- 1/ It is understood that approximately 3,223 agents in the U. S. represent both IATA and ATC members.
- 2/ It is understood that the Plan will be tried initially in the single State of Illinois, followed by expansion to the entire 13-state bank area based on Chicago. Ultimately, it is proposed that ten area banks will be designated in the U. S., Canada and possibly Hawaii.

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Irrespective of the foregoing, which problems presumably are not insurmountable, it is apparent that the principal issue involves the cost of operation of the Plan. Thus, from the carriers' view, the remittance procedure is of paramount importance since the charges to be made by the banks are not considered justifiable unless moneys accruing from the sale of air transportation become more readily available to the carriers. The carriers have indicated that cash flow computations show that implementing the Plan on the present twice-a-month reporting basis would impose substantial additional costs on the carriers, and that the three-times-a-month reporting proposed in the Plan is as far as the carriers can go without incurring undue costs. The practical choice therefore, according to ATC, is to proceed on the basis proposed or abandon the Plan.

On the other hand, comments so far received from agents reflect major objection to the increase in remittance frequencies from two to three times per month 3/ and the reduction in the grace period from five calendar days (from the last day of the reporting period) to two working days, i.e., when the remittance is mailed. 4/ They point out that, in order to remain competitive with the Universal Air Travel Plan (UATP) and other airline credit practices, many of them have adopted the procedure of issuing tickets and subsequently billing clients therefor; that with the accelerated remittances, agents would frequently have to pay the carriers for tickets sold before collecting from customers; thus, it would be necessary for these agents to obtain at their own expense sufficient working capital to carry accounts for approximately 30 days. Further, certain of the multi-branch agents using central accounting procedures indicate that their individual branches are not equipped to handle reports and that it would be physically impossible to mail a single report for the entire firm within the specified grace period.

In sum, it appears to the Board that the agents generally agree with the Plan in principle; that the carriers believe the major portion of the expense of the program should be borne by the agents; and that the agents may not view the over-all benefits as offsetting the more restrictive proposed requirements on remittance and grace periods. On the basis of available information, it is difficult for the Board to assess fully the advantages and disadvantages to all concerned. If the Plan, in fact, represents a significant improvement in the method of operation for carriers and agents, every effort should be made to reach an equitable solution. Otherwise, it properly should not be implemented. The Board so far has received comments from ASTA and a few individual agents; none from individual carriers. It would urge representatives of both industries to present further views on the subject.

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- 3/ Certain agents operating ten or more authorized locations are presently permitted to remit only once a month but this exception is abolished by the new plan so that the increase for these agents will be from once to three times per month.
- 4/ Also see the discussion of Paragraphs 16 and 23 of the resolution in the Appendix hereto.

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Insofar as agents are concerned, the Board would be interested in receiving statements as to whether the Plan merits approval or disapproval in its present form. Such statements should explain fully the reasons in support of or in opposition to the Plan. Where the Plan is basically acceptable subject to modification, specific suggestions are desired on alternative procedures. In this connection, the reporting difficulties anticipated by multiple-location agents using central bookkeeping might be resolved by reporting on an estimated basis. 5/ Otherwise, it is not apparent to the Board that multiple-location agents should operate under procedures more liberal than those applicable to agents with single locations.

With respect to the carriers, the Board particularly desires additional information as to the reasons why it is believed that the benefits anticipated under the Plan justify the substantial added costs, particularly to agents, which the program entails. 6/ It is apparent, of course, that the Plan would improve cash flow. We presume that the principal objective here is the recovery of added costs of the program rather than improvement of the carriers' financial position per se; any broad program along the latter line would seem to involve adjustment of carrier collection and credit practices in areas other than agency only. In any event, it would appear that other stated benefits, e.g., a uniform ticket, volume purchases of tickets, central requisition source, etc., could be achieved through joint industry efforts not involving the area bank settlement portion of

the Plan. In short, it is not readily apparent that the Plan represents such a sufficient improvement over present procedures as would warrant the added financial burden involved, or that the assumed benefits to agents are proportionate to the expenses which they would bear. 7/

- 5/ The estimate could be based upon sales in the previous period, in the same period of the previous year, or other appropriate basis, with a settling adjustment within a reasonable number of days following the estimated remittance. We presume that under this procedure, distribution of funds by the designated area banks would also be made on an estimated basis.
- 6/ The 1962 Origin and Destination Survey places the number of domestic tickets at 33,741,460 (on a 10% sample basis), subject to certain exclusions. Applying a factor of 25%, suggested by ATC, approximately 8,435,365 of the total would represent tickets sold by agents, and the area bank service charges, at 2.5 cents per item, would amount to at least \$210,884. By contrast, a review of cash flow data contained in the agreement (Exhibit I, page 4) indicates that, at a daily agency sales volume of \$2 million, the carriers are projecting a net gain of \$300,000 per-annum based upon changing agents' remittance frequencies from twice to three times per month. However, it appears to the Board that a more accurate figure may be in excess of \$450,000 when allowance is made for the greater average number of days cash is presently held by those multi-branch agents now authorized to remit monthly (16.5 days vs. 9 for other agents, exclusive of grace periods). We assume that in responding to this order, the carriers will fully discuss the specific costs of the program in relation to the comparative benefits to them resulting from the improved cash flow.
- 7/ In this connection, the Board desires current information on the specific procedures which would be applicable to the required acquisition by agents of validators and ticket writers. Such data, including costs, should cover both initial and full implementation of the Plan.

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Aside from the broad aspects of the Plan, certain specific features warrant brief comment. It appears that the increased remittance frequencies and shortened grace period will increase the risk of an agent becoming delinquent and being so cited on the list of such agents published monthly by ATC. There are at least two alternative approaches which should be considered to make the arrangement more equitable. The carriers could, for example, increase the number of times an agent must appear on ATC's monthly delinquent list before withdrawing ticket stock, or the grace period could be extended from the proposed 2 and 3 working days, perhaps to 4 and 5 working days. 8/ Also, further consideration should be given to the need, in the light of all other safeguards in the agency rules, for the new rule requiring withdrawal of ticket stock and authorization to issue exchange orders from an agent who fails to remit within 10 days. 9/

As indicated above, the Board will defer further action on the matter for a period of 30 days to allow interested persons an opportunity to submit comments.

ACCORDINGLY, IT IS ORDERED:

1. That action on Agreements CAB 16874 and 16874-A1 be and it hereby is deferred;
2. That any interested persons may file statements in triplicate with the Board's Docket Section concerning the foregoing within 30 days after the issuance of this Order. Such statements should conform with the general requirements of the Board's Rules of Practice in Economic Proceedings; and
3. That this Order shall be published in the Federal Register.

By the Civil Aeronautics Board:

(SEAL)

HAROLD R. SANDERSON
Secretary

- 8/ This suggestion would result in slightly more liberal grace periods than are contained in the currently effective agency resolution which allows 5 (if mailed) and 7 (if delivered) calendar days after the last day of the reporting period for submission of the remittance. Converting to average working days (by allowing for Saturdays, Sundays and holidays) the present requirement is about 3.5 and 4.8 days.
- 9/ See Appendix A for discussion of Paragraph 15 of the agreement.

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APPENDIX A

PRINCIPAL PROVISIONS OF RESOLUTION TO IMPLEMENT AREA SETTLEMENT PLAN AGREEMENT CAB 16874 1/

¶1. Airline Identification Plate

This means a plate bearing the airline's name (or authorized abbreviation) and code number and the agent's name, location and code number, for use in a ticket validator. Specifications for the plate are to be determined by the Executive Secretary - ATC (I.T)

¶1. Designated Area Bank

This means a bank designated to receive and process sales reports and remittances from authorized agency locations in a designated geographic area. No bank having a bank travel department will be so designated. (I.U)

¶3, 4, 5, 7 Placement and Removal of Airline Identification Plates 2/

After appointing an agent, the carrier will furnish airline identification plates for use at authorized agency locations, but not necessarily to all such locations operated by the agent. (IV.E)

During the pendency of an appeal of removal from the Agency

list, appointing carriers are required to withdraw airline identification plates unless the agent posts the supplemental bond specified in paragraph 27 of the Sales Agency Agreement. (IV.I.6)

During the period of an agent's suspension, all appointing carriers are required to withdraw airline identification plates previously given such agent. (IV.I.7)

A carrier cancelling the appointment of an agent shall promptly repossess the airline identification plate from each agency location. (IV.K)

- 1/ The particular section numbers of the Sales Agency Resolution or Sales Agency Agreement (SAA) which would be amended, deleted or added to are indicated in parentheses following the discussion of each paragraph.
- 2/ The presently effective comparable sections refer to ticket stock, ticket forms or exchange orders rather than to airline identification plates. Similar changes applicable to Canada are included in paragraphs 9 through 13.

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APPENDIX A

¶14A Termination of Sales Agency Agreement Upon Default

If an agent fails to remit to an ATC member within fifteen days after the last day of the sales report period prescribed by the Sales Agency Agreement, the carrier shall immediately, after confirming the non-remittance by telephone or telegraph with the designated area bank, notify the Executive Secretary of ATC. The latter shall notify all carriers and terminate the Sales Agency Agreement on their behalf. (VII A) 3/

¶15, 27 Withdrawal of Airline Identification Plates Upon Default

If the agent is in default to a carrier, the latter may either terminate the Agreement, as between it and the agent, by notice in writing to the agent, or may, for such periods as it deems advisable,

withdraw its airline identification plate and revoke authorization for the agent to draw its own exchange orders on the carrier. 4/ Under the second alternative, the carrier is required to notify immediately (through the Executive Secretary - ATC) other carriers and the Secretary-AFAC who are required to withdraw all ticket forms, exchange orders, airline identification plates and authorizations to draw the agent's own exchange orders upon such carriers. The agent shall not thereafter be supplied with these items by the Secretary - AFAC and the carriers until 7 days after the Executive Secretary - ATC mails a notice to each carrier that the agent has satisfied or adjusted all amounts due any member. (VII B, SAA ¶15)

¶15 Failure to Remit Within 10 Days

A further requirement of paragraph 15 is for immediate notification to all carriers and withdrawal of ticket stock, exchange orders, airline identification plates and authority to issue its own exchange orders from an agent upon advice by the designated area bank that the agent has failed to remit within 10 days after such remittance was due. 5/ (VII B)

- 3/ The presently effective section VII A states that the agent must remit "within 15 days after such remittance is due under the terms of the Sales Agency Agreement". Under the latter (paragraph 5), the agent is to report and remit not later than the first and 16th days of each calendar month through the close of business on the preceding day. The carrier may, in writing, designate other intervals. Thus, as the Board understands it, the present rules provide for a sixteen-day default period running from the last day of the sales report period, and the new plan would reduce this default period by one day.
- 4/ As the Board understands it, this option is not available to the ATC member where the default consists of failure to remit within 15 days resulting in termination of the Sales Agency Agreement by the Executive Secretary - ATC.
- 5/ The Board understands this language to provide that the ten days run from the last day of the reporting period.

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APPENDIX A

¶16 New Basis for Appearance on Monthly Delinquency List

This paragraph requires the Executive Secretary of ATC, upon being notified of an agent's delinquency, pursuant to paragraph 5 of the Sales Agency Agreement, to send a registered letter to such agent, notifying all carriers of the action. As revised herein, all agents must report and remit 3 times monthly by the third working day after the last day of the reporting period (if mailed the remittance must be postmarked by the second working day). 6/ Thus, the grace period for avoiding appearance on the monthly delinquency list is significantly reduced, even after allowing for the difference between a working day and a calendar day. The paragraph continues the present provision for monthly publication of a list of agents receiving such letters, and withdrawal of tickets, exchange orders (and now airline identification plates) from any agent appearing on the monthly list 4 times during any 12 consecutive months. (VII C) 7/

¶17 Notification to IATA

This paragraph provides that if any ATC member or designated area bank notifies the Executive Secretary of ATC that an agent has failed to remit or that his check was returned by the drawee bank for insufficient funds, such information shall be transmitted to IATA. Similar information from IATA regarding its agents will be passed on to ATC members. 8/ (VII F)

¶18, 32 Elimination of Monthly Remittances

The exception permitting agents with at least ten authorized locations to remit at intervals less frequent than twice monthly is repealed in its entirety, as is authorization for the Executive Secretary - ATC to enter Supplemental Sales Agency Agreements with agents eligible to employ special remitting frequencies. (XI)

¶18 Recovery of Ticket Stock

When the Secretary of AFAC is required to withdraw Standard Agent's ticket forms and exchange orders from an agent, he will designate an ATC member for such purpose, and the latter will also recover all airline identification plates. (new section XI)

- 6/ At present, reports and remittances are required twice monthly (with an important exception permitting monthly reporting for agents with 10 or more locations) within seven calendar days after the last day of the reporting period (if mailed the remittance must be postmarked by the fifth calendar day). (On average, a working day approximates 1.4 calendar days.)
- 7/ As filed the paragraph would continue notification to IATA and use of IATA's similar list; however, such provisions were deleted, effective April 22, 1963, by Agreement CAB 5044-A97, which also contained new procedures for the reinstatement of previously delinquent agents.
- 8/ Mention of the designated area bank is the only practical change from the present rule, which is apparently still in effect despite the recent elimination of the inter-association exchange of monthly lists of delinquent agents (see footnote 7).

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APPENDIX A

¶20 Carrier Ticket Stock Under Special Supplemental Agreement

This paragraph provides that a carrier may enter a Special Supplemental Agreement whereby it supplies an agent it has under appointment with ticket forms and exchange orders for issuance solely for transportation to or from points outside the continental U.S. and Canada. ATC states that this arrangement is designed to accommodate ATC-only agents and ATC-only carriers until such time as IATA recognizes the Standard Agent's Ticket for international interline transportation, or participates in the plan. The Special

Supplemental Agreement continues existing remittance periods, requires report of defaults and dishonored checks per section VII A as revised herein, and specifically excludes the arbitration procedures provided in the basic agreement. The form of the Special Supplemental Agreement is shown in Attachment A to the instant resolution.

¶21 Order of Preference of Use of Airline Identification Plates

In selling air passenger transportation, the agent is to use airline identification plates in the following order of preference: (a) the carrier through which the reservation is made, provided such carrier participates in the routing; (b) the carrier performing the first sector; (c) if the agent has neither of these plates, the plate of any carrier participating in the transportation; (d) if the agent has none of these, the plate of any other carrier. (SAA ¶2) 9/

¶22 New Rules for Issuance of Tickets and Exchange Orders

This paragraph requires the agent, in selling transportation on the lines of the carrier to issue only Standard Agent's tickets or exchange orders, but provides for exceptions, if authorized by the carrier, for use of: (1) the agent's own exchange orders; (2) envelope - type exchange orders; (3) carrier ticket forms or exchange orders (under a Special Supplemental Agreement); and (4) forms issued under the IATA Passenger Sales Agency Agreement.

Standard Agent's ticket forms and exchange orders would be supplied to the agent by the Executive Secretary of AFAC as agent for the appointing carrier. The form of the standard ticket is shown in Attachment B to the instant resolution; the Agent would be required to enter the commission and net remittance on each ticket (auditor's coupon).

9/ Under the presently effective provision, the agent is to issue tickets or exchange orders of carriers in the following order of preference:

(a) the originating carrier; (b) any carrier participating in the routing; (c) any other carrier party to the resolution.

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APPENDIX A

The agent would be required to procure (at agent's cost) one or more validators, or ticket writers, for use at each place of business covered by the Agreement and of a type approved by the Secretary - AFAC. The carrier would supply one or more airline identification plates for use in the validators or ticket writers, such plates to remain the property of the carrier. The paragraph specifies that, in addition to ticket forms, identification plates supplied for use at a specified place of business shall not be used at any other place of business. (SAA ¶4)

¶23 New Collection and Remittance Rules

All agents are required to report and remit 3 times monthly for all transportation or ancillary services sold under the agreement for which the agent has issued Standard Agent's Tickets or exchange orders, or drawn exchange orders on the carrier. The report would be on a new form supplied by the Secretary-AFAC (Exhibit VI accompanying the resolution).

The report and remittance are required to be delivered to the designated area bank within 3 working days following the last day of the reporting period, or postmarked (by post office mark, not postage meter) not later than midnight of the second such working day.

10/ There is also provision for a "no sales report" form. As at present, the agreement provides that moneys, less applicable commissions, collected by the agent and transportation receipts and similar documents shall be the property of the carrier and held in trust by the agent until satisfactorily accounted for to the carrier.

11/ (SAA ¶5)

10 At present agents are required to remit twice a month; such remittance must be received by the carrier within 6 calendar days of the date due; i.e., the day following the close of the re-

porting period, or thus within 7 calendar days. If mailed, the remittance, under present rules, must be postmarked within 4 calendar days of the date due (the equivalent of 5 calendar days from the end of the reporting period). Under an exception which would be repealed by the instant agreement, agents with ten or more authorized locations may remit once a month. As the Board understands the present provisions of the agency resolution and Sales Agency Agreement, the grace periods afforded such agents reporting monthly are no greater than indicated above, i.e., 7 calendar days, or 5 calendar days if mailed. Under another present provision which would be repealed, however, agents with ten or more locations which report 3 times monthly are permitted a grace period of 9 working days. Only one agent is understood to be presently remitting on this basis.

- 11/ The paragraph continues an old requirement relating to individual agent's bonding for the benefit of the carrier. The Board understands that this language is obsolete, insofar as U. S. agents are concerned, in view of the now effective industry bonding program.

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APPENDIX A

¶30 Additional Bond During Arbitration

If, pursuant to the Sales Agency Resolution, the agent demands arbitration, he must surrender all airline identification plates and Standard Agent's ticket forms and exchange orders unless he posts with the Executive Secretary - ATC a bond (or supplement to an existing bond) in an amount equal to his highest monthly ATC-commissionable sales in any one of the past 12 months. If the agent posts such bond, he shall continue to be supplied with airline identification plates, and Standard Agent's ticket forms and exchange orders, subject to certain conditions. (SAA ¶27.d)

¶33 Interconference Area Settlement Plan Committee

The committee is established to develop proper procedures and manuals, maintain liaison with specified banks, and select vali-

dators and ticket writers. It is to consist of eight members, two of whom shall be members of each of four different ATC and AFAC committees. Provision is made for interim liaison with and eventual full participation in the committee by IATA.

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[Received Sep. 20,
1963, CAB]

THOS. COOK & SON
Incorporated

587 Fifth Avenue, New York N.Y.

September 19, 1963

Civil Aeronautics Board
Docket Section
Washington 25, D.C.

Agreement CAB 16874 and 16874-A1, Docket 14191
Order Deferring Action on A.T.C. Standard Agent's
Ticket and Area Settlement Plan
Order No. E-19945

Gentlemen:

In accordance with the above Order, we submit the following statement representing the view of the corporation in the Plan.

1. Thos. Cook & Son operate 38 agency locations in USA and Canada and use central accounting procedures to prepare sales reports for A.T.C. and I.A.T.A. carriers, thus simplifying their accounting as well as our own. Individual branch locations are not equipped to handle such reports.
2. The Plan is basically acceptable to Thos. Cook & Son subject to certain modifications, particularly in the proposed grace period of two working days; i.e., when the remittance is mailed. Thos. Cook & Son are reporting presently three times monthly with a grace period of nine working days and this grace period is essential to the continued operation of the central accounting procedure.

3. It is submitted that the Plan be modified to permit multiple-location agents using central bookkeeping to report three times monthly with a grace period of nine working days; i.e., an additional seven working days grace period. Thos. Cook & Son recognize that the cash flow encouraged under the Plan is of fundamental importance and is agreeable to an estimated amount being remitted to, and held by, the area settlement bank in the equivalent of seven working days sales. Since seven working days are approximately equal to ten calendar days, this "deposit" amount would represent the sales of one reporting period and could be readily adjusted on the basis of sales in each previous period.
4. Additionally, it is submitted that multiple-location agents using central accounting procedures be excluded from the Plan until such time as the implementation of the Plan permits central

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remittance to one area settlement bank in the U.S.A. and to one area settlement bank in Canada. Bookkeeping problems would be created if the Plan were applied gradually over a period of time to the different branch locations.

5. The Plan requires that reports be made on forms supplied by the Secretary - AFAC. Thos. Cook & Son feel that some flexibility in this should be allowed so that agents can prepare reports on existing accounting machine equipment.

Very truly yours,

Thos. Cook & Son, Incorporated

Per: /s/ A. Crotty
Secretary-Treasurer

AC:bg

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American National Bank and Trust Company of Chicago
LaSalle at Washington, Chicago

September 20, 1963

Mr. Stuart L. Tipton, President
c/o Air Transport Association of America
1000 Connecticut Avenue, N.W.
Washington 6, D.C.

Dear Mr. Tipton,

We are aware of the Standard Agent's Ticket and Area Settlement Plan proposed for travel agents by the Air Traffic Conference, including the comment concerning such Plan as set forth in Order E 19945 of the Civil Aeronautics Board.

In the light of the Board's expressed intention of seeking additional information concerning this Plan from all concerned, including all carriers individually and jointly, we are prompted to write to you with the request that we be permitted to discuss our possible participation in this Plan as an Area Bank with you. We shall be pleased to send an official representative to Washington to discuss this possibility with you and the Civil Aeronautics Board if that is required or desirable.

It is our present opinion that, based on the material we have so far reviewed - and subject to verifying this expectation from corroborating sources, we are in a position to handle the mechanical aspects of the Plan without requiring a change in the present semi-monthly reporting of travel agents or in the present grace period procedure.

We shall look forward to your response in this connection.

Sincerely,

/s/ Rodney O. Daly

ROD/n

cc: Mr. Allan S. Boyd, Chairman
Civil Aeronautics Board

[Received, Civil Aeronautics Board, Sept. 24, 1963]

[Rec'd Sep. 23, 1963]

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Agreement among the	:	Agreement
MEMBERS OF THE AIR TRAFFIC	:	CAB 16874
CONFERENCE OF AMERICA	:	and 16874-A1
proposing a standard agent's ticket and	:	Docket 14191
area settlement plan.	:	

STATEMENT CONCERNING AGREEMENTS
CAB 16874 and 16874-A1

Communications with respect to this statement should be addressed to:

John D. Stewart, Vice President
American Express Company
65 Broadway
New York 5, New York

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FACTS

The members of the Air Traffic Conference of America (ATC) have filed with the Civil Aeronautics Board (the Board), pursuant to Section 412 of the Federal Aviation Act of 1958, a resolution entitled "Standard Agent's Ticket and Area Settlement Plan". (Agreements CAB 16874 and 16874-A1)

By Order No. E-19945, issued on August 23, 1963, the Board deferred action on the foregoing resolution and granted interested persons 30 days within which to file statements concerning such resolution. This statement is submitted by American Express Company in response to such order.

DISCUSSION

Standard Agent's Ticket

Like most organizations engaged in business for profit, American Express Company strongly supports any effort to increase efficiency and reduce costs. From this standpoint it heartily approves the concept of a Standard Agent's Ticket. However, the net advantages of such a ticket to the travel agent, if adopted only by ATC and not by IATA, are minimal at

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best. The reasons against the adoption of a Standard Agent's Ticket which is not available by use by IATA carriers as well as ATC carriers have already been set forth in comments heretofore submitted to the Board and are discussed in the Board's Order No. E-19945. Accordingly, American Express Company believes it would serve no useful purpose to reiterate those reasons herein. Suffice it to say that American Express Company supports the position that approval of the concept of a Standard Agent's Ticket for use by ATC carriers should not be approved unless and until the concept is also adopted for use by IATA carriers.

Area Settlement Plan.

American Express Company is not opposed to some form of area settlement plan if it will have the effect of increasing efficiency in reporting requirements without at the same time imposing an undue financial burden on sales agents. It is most unfortunate that the ATC carriers have chosen to place in large part the additional costs of their plan upon their sales agents through requiring an increased frequency of settlements, notwithstanding the economies that will accrue to the carriers themselves through

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centralized purchasing and distribution of ticket forms and the like. To impose upon sales agents, who already operate on an extremely small margin of profit, the additional financial burden which will result from more frequent settlements will have the effect of reducing the funds available to agents for advertising and promotional purposes, and cannot help but result in a curtailment of their activities in that regard. This is particularly true in the area of domestic air transportation where the sale of air tickets already results in only marginal profits and even losses to many agents due to the relatively low dollar cost of the tickets and the correspondingly low commission revenue to agents.

American Express Company believes that the additional expense to the carrier of the area settlement plan should be borne by the carriers themselves and should not be imposed on agents by requiring thrice monthly settlements. The carriers are in a far better position than agents to absorb such additional expense, since they will be able to offset such additional expense in whole or in large part by the savings to them resulting from a reduction of

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ticket printing and distribution costs, elimination of administrative detail, simplification of ticket inventory control and like. On the other hand, any purported advantages to the agent stemming from the ATC area settlement plan in its present form would be minimized in large part by the increased financial burden of more frequent settlement reports and by the increased clerical work resulting from the necessity to observe and comply with completely separate and different reporting schedules and procedures for ATC and IATA carriers.

The Board has called attention to the fact that certain agents operating ten or more authorized locations are presently permitted to remit only once a month and has indicated that it is not apparent to it that multiple-location agents should operate under procedures more

liberal than those applicable to single location agents. We do not feel this provision (of which, incidentally, American Express does not now avail itself) is unduly favorable to multiple-location agents but is rather a realistic recognition of the problems of such agents in collecting, consolidating and auditing settlement reports covering

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such multiple locations. American Express believes that any change in present procedures should make due recognition of the problems peculiar to such multiple-location agents. For example, American Express is currently developing and hopes - with the approval of its appointing carriers - to inaugurate in the near future a consolidated sales report covering all of its authorized locations in the United States which will provide a single daily settlement to airlines based on a 15-day cycle. This type of reporting procedure, which we are convinced offers real and substantial advantages and economies both to ourselves and to the carriers, has become possible only through the use of our modern computer equipment. This procedure has been discussed in detail with leading carriers in both the domestic and international areas, and has received a favorable reception from them. It will be difficult and may be impossible to realize the advantages of this procedure if each of our sales locations throughout the United States is required to settle to an area bank or if the reporting period is shorter than fifteen days. We therefore believe that, in order to permit the carriers to take maximum

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advantage of this and similar procedures which may be developed in the future by other multi-location agents utilizing modern high-speed accounting and computing equipment, the area settlement plan should be made sufficiently flexible to permit a multiple-location agent, at its option, to elect to make a consolidated

settlement to one area bank and to authorize the Executive Secretary of the Conference to arrange with such agent for mutually agreeable reporting periods up to a maximum of fifteen days.

SUMMARY

1. American Express Company approves in principal the adoption of a Standard Agent's Ticket. However, American Express Company opposes the adoption of such ticket for use by ATC carriers unless and until the same ticket is adopted for use by IATA carriers.

2. American Express Company has no objection to the adoption of an area settlement plan for use in making remittances to ATC carriers provided that:

(a) The implementation of such plan results in increased efficiency in remitting procedures and does not impose any additional financial burden

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upon sales agents;

(b) Such plan would grant agents having more than one approved location the option of making consolidated settlements for all locations to one area bank;

(c) Such plan would authorize the Executive Secretary to arrange with an agent electing to make such consolidated settlements, mutually agreeable reporting periods not greater than fifteen days.

Dated: September 20, 1963

Respectfully submitted,

/s/ John D. Stewart

Vice President

American Express Company

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COMMENTS OF FUGAZY TRAVEL BUREAU, INC.
ON THE BOARD'S ORDER NO. E-19945
AUGUST 23, 1963

COMMUNICATIONS SHOULD BE ADDRESSED TO:

Mr. William D. Fugazy, President
Fugazy Travel Bureau, Inc.
488 Madison Avenue
New York 22, New York

Paul Reiber, Attorney
1815 H Street, N. W.
Washington, D. C.

Dated: September 23, 1963

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In response to the Board's Order E-19945 of August 23, 1963, Fugazy Travel Bureau, Inc., hereinafter referred to as Fugazy submits comments on the proposed area settlement plan. These are supplementary to the comments of Fugazy filed with the CAB by letter dated November 20, 1962. We will not burden the record with a repetition of earlier comments, but reaffirm them as though repeated here.

I.

One of the areas of controversy between the airlines and the travel agents is the sales and service to large commercial accounts. The proposed area settlement plan is another battle in that war — particularly as it would affect the multiple-location agent's ability to extend credit to the large account. As long as the multiple-location agent has had to remit to the airline once each thirty days, he has been able to extend approximately thirty days credit to the large commercial account. By

requiring the multiple location agent to remit every ten days, the carriers will make it impossible for Fugazy to continue to serve such accounts.

The vital role of credit in sales and sales promotion makes it essential to a competitor who wants to stay in the race. The Board recognized this in its recent decision in the Passenger Credit Plans Investigation, Docket 10917, Order E-19197, January 16, 1963, hereinafter referred to as the "Credit" case, where the extension of credit by airlines was approved to permit those carriers to compete with other modes of transport. See pp. 11 and 12 of that decision.

Credit is an accepted business convenience and its extension in the sale of air transportation has been repeatedly approved by the Board.

"At the outset, it should be stressed that the purely credit aspect of the various plans under discussion is not their significant feature. The purpose of these plans is not the postponement of payment pending the obtainment of necessary funds, but the elimination of cash-at-the-counter dealing and the provision of a single bill for all air transportation at regular intervals. Deferral of payment is incidental to these functions. The substantial benefits to the credit customer are the convenience of not having to carry large sums of money, the time-saving in purchasing air transportation, the ability to pay for all air transportation charges under one billing, and the value in having complete records of travel expenditures.

". . . The record is replete with evidence that the extension of this kind of convenience credit is an accepted and widespread business practice and that

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it is not customary to exact a charge therefor. There is evidence, for example, that one-third of all retail trade is done on a credit basis, a large portion of which is done on interest-free charge accounts. Of course, practices

in the unregulated business world are not necessarily the standard of conduct for public utilities and common carriers. Nevertheless, in determining whether such practices are justified when engaged in by airlines, conformance with accepted business practice is, in our opinion, a factor to be weighed along with other considerations." "Credit Case," p. 7. See also Board's Order E-18769, September 4, 1962, approving credit for air freight shipments.

Within the air transport industry the competition which has always been intense for the commercial and credit account has been sharpened by the expansion of credit plans.

The airlines have numerous advantages in their competition to serve large accounts. They have several credit plans. They have out-for-collection plans. They have self-ticketing plans. They install ticketing machines in the buyers' offices. In spite of all this sales inducement — and muscle, some commercial accounts still prefer the service and impartial counsel of a travel agent. But if the travel agent must terminate the credit services which have been made possible by remittance on the thirty day basis authorized for the past fifteen years, many, if not all, of these commercial accounts will abandon the travel agent.

The present annual volume of business of Fugazy is approximately \$35,000,000. More than 90%, or approximately \$32,000,000 this year is done on credit. That is, the services are provided and are billed thereafter. Payment is received primarily from three to thirty days thereafter. Fugazy remits to the airlines monthly, not later than six days after the close of the month; a greater delay would place it in default.

Fugazy cannot continue its present business if it must remit to the airlines each ten days; this is so whether it must remit actual sales or estimated sales, because it cannot finance that volume of credit business.

II

Since Fugazy is competitive with other services available to the traveling public, it is significant to note that its services do more for the carriers at less cost.

Extension of credit by Fugazy costs the carriers less than other credit made available by them. Fugazy gets only 5% commission for both sales and credit services, whereas the costs to carriers for

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their on-line credit plans alone were estimated at 4.84%. The airlines pay 5.95% for Hilton credit and Diner's Club credit, and 7.95% for Bancamericard credit. Credit Case, Supra, p: 13.

Furthermore, Fugazy pays more promptly than others. Fugazy pays within six days under penalty of his appointment. Diners' Club pays on the 15th of each month for billings received on or before the 27th of the preceding month. Credit Case, Supra, Examiners Report, p. 9. This allows 18 or 19 days delay and we know of no lethal penalty if it fails.

As to the carriers' other credit plans, it is common knowledge that periods between billing and payment can be very extended. And of particular significance is the fact that there is no penalty for failure to pay by the appointed hour as serious as there is for the travel agent.

The Area Settlement Plan as currently proposed would prevent Fugazy from competing as it now can — and as it has for a number of years. A hearing should be held to determine what transport considerations require such action contrary to the policy of the anti-trust laws of the United States. Local Cartage Agreement Case, 15 CAB 850 (1952).

III

The Board's Order of August 23, 1963, at page 5, indicated

"... it is not apparent . . . that multiple-location agents should operate under procedures more liberal than those applicable to agents with single locations."

There are differences in history and in function that justify different treatment. Travel agents with multiple locations have had relationships with airlines which differed from the relations of other travel agents since the travel agency business was revived after World War II. When the program was first organized in the late war years, special letters were sent to, and special consultations were had with, the multiple location travel agents to work out a mutually satisfactory relationship. Even though the CAB did not formally approve the thirty day remittance period until 1948, it may well be that such agents reported sales on that basis since 1946. In any event, in that year authorization for such remittance period was formally included in the Agency Resolution and the Board's approval requested and granted. While the fifteen years practice since 1948 can not convert illegality into legality, it is important to recognize that the practice may be as old as the agency program itself. Credit Case, where it said, at page 10:

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"Of course, the usage of such practices, when over an extended period of time, will not legalize otherwise unlawful preferences and discriminations. Nevertheless, we regard as a matter of some significance the fact that we are dealing with not novel proposals, but rather with ingrained historical practices. Nor are we unmindful of the fact that these practices over the years have been approved by the Board on prior occasions . . . Acceptance of the Examiner's recommendations would thus affect a radical change in long established practices which the public has come to accept as conveniences and which have become a part of the airlines' methods of doing business and the airlines' relations with their customers."

Multiple-location agents provide a number of advantages to the travelling public, the travel industry and the airlines which have justified different treatment for fifteen years. These were discussed in detail in our letter of November 20, 1962. Fugazy has built a business of

selling air transportation. Much of its success depends on the credit he can make available, under the present remittance periods. Sales on credit are essential for Fugazy to compete in the market it serves. The Board has recognized that "The existence of such compelling competitive relationships has long been recognized as one of the special circumstances which may justify technically preferential and prejudicial . . . practices." Credit Case, Supra, p. 12.

IV

The preparation of one sales report rather than a separate report for each airline would be desirable. This advantage would justify the increased costs to the agents for new validators (subject to the continuance of the monthly remittance discussed above and central reporting discussed in our letter of November 20, 1962.)

It is not apparent, however, as the Board's order points out, that the advantages proposed will materialize as long as international sales must be reported separately and separate reports made to each airline. So long as numerous reports must be made, the savings held out as inducement to adopt the new plan will remain elusive.

V

The above comments are prepared on the basis of the Board's Order of August 23, 1963, without benefit of any changes in the Area Settlement Plan which may have been proposed by the ATC after that Order. It was reported in Travel Weekly for September 17, 1963, that ATC had a conference with selected travel agents on September 17, 1963. Although Fugazy is one of the largest travel agents, although Fugazy is not a member of ASTA; although Fugazy was one of the few agents to file comments on the ATC plan and served all ATC members

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with such comments, Fugazy was not invited to attend the ATC meeting and has had no notice of any negotiations, concessions, or other arrangements made at such meeting. If changes were proposed at such

meeting, Fugazy requests an opportunity to comment on any amendments to the plan when such are made public.

VI

In an important sense, the basic issue is whether Fugazy is to be allowed to continue its services for the travel customer. Fugazy is performing a useful and desirable function, which if eliminated reduces customer's choice, eliminates services not otherwise available, without bringing balancing benefits to air transportation.

Because Fugazy has had this business opportunity by virtue of the airlines' and the Board's approval, and because it can be taken away only by Government action, Fugazy is entitled to a hearing, which is respectfully requested.

Respectfully submitted,

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COMMENTS IN SUPPORT OF STANDARD AGENT'S TICKET PLAN

The Standard Agent's Ticket Plan is a major advance which offers signal benefits to the Agents and the air carriers through simplification of the Agents' ticketing, reporting and remitting procedures.

This was the unanimous view of the members of the Air Traffic Conference when the Resolution embodying the Plan was adopted in August 1962. Nothing has developed since that time to cause any change in that view.

The anticipated benefits of the Standard Agent's Ticket Plan, as well as the mechanics of the Plan, have been fully set forth in explana-

tory documents previously filed with the Board, such as the extensive summary, with supporting exhibits, which was transmitted with the Resolution at time of filing; the letter of May 23, 1963 from Mr. E. F. Kelly, ATA Vice President-Finance and Accounting, to Mr. J. W. Rosenthal, Chief, CAB Routes and Agreements Division; and letters from ATC Counsel dated November 20 and December 12, 1962, and January 21, 1963. The instant comments will attempt to avoid

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repetition of what has already been said, and will touch only on matters which appear to warrant clarification or fresh perspective in view of the Board's Order No. E-19445, August 23, 1963, deferring action, inviting additional comments, and asking certain specific questions.

The instant comments are grouped under topic headings which appear from the Board's Order to represent the major areas of present concern.

1. Benefits to Agents

An express and major purpose of the Standard Agent's Ticket Plan is direct benefit to the Agent by reducing the amount of the Agent's paper work. Indeed, it could fairly be said that the genesis of the Plan lies as much with the travel agents as with the airlines, for, over the years, Agents have repeatedly urged the carriers to adopt for Agents a single ticket stock and a consolidated reporting and remitting procedure. (See, e.g., testimony of Agent Joyce, Docket No. 8300, Tr. 234, on April 17, 1957.)

Under existing procedures, an Agent must prepare and transmit a separate sales report and remittance check for each reporting period for each air carrier one or more of whose tickets were issued by the Agent during the period, and a separate "no sales" report for each air carrier whose ticket stock was held, but none of which was used during the period. (Agent Joyce, in testifying to the work load imposed by the necessity of separate carrier reporting, noted that his agency held "all domestic ticket stock in our office,

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with the exceptions of Continental, Western Airlines, Southwest, Lake Central." Tr. 233.)

Audit coupons for all tickets sold (or voided) must be segregated by carrier, listed on individual carrier reports, totalled separately, and, in all probability, the totals of all reports balanced to the Agent's own accounting records. Refunds made by the Agent during the reporting period, and any adjustments to reports for prior periods, must likewise be segregated and reported to the carrier with whom the refund or adjustment is to be handled.

Each of these reports — more than 20, every 15 days, in the case of Agent Joyce — must account, in numerical sequence, for the carrier's ticket stock used. And, of course, quite apart from the reporting, the Agent must exercise ticket control procedures so that each carrier's stock is kept and drawn upon in numerical sequence and so that, at any time, the Agent can account to each carrier for all ticket stock supplied him by the carrier.

The Standard Agent's Ticket Plan reduces the Agent's work load for airline ticketing and reporting procedures to the minimum consistent with sound business practice. Instead of a separate ticket stock for each ATC member carrier, the Agent would have one ticket stock, the name of the carrier being imprinted on the ticket at the time it is written up through use of a special airline identification plate inserted in the ticket validator. Instead of separate reports to each carrier, the Agent would submit one consolidated report covering all Standard Agent's Ticket sold during the period. And, because there would

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be only one consolidated report, and one numerical sequence, with no segregate auditor's coupons by carrier, the Plan would make it much easier for the sales report to be kept current on a daily basis, if that suits the Agent's convenience.

Thus, the Plan offers direct and substantial benefit to the Agent through reduction of operating costs and through minimizing the time spent by Agency personnel on ticket control, accounting and reporting procedures.

These aspects of the Plan are stressed because the ATC carriers firmly believe that the Plan is a major advance in the Agency field, and one that was developed, after a great deal of hard work by the airlines, in response to the Agent's own desires for relief, to the maximum extent possible, from the work load imposed by present carrier-by-carrier ticket stocking and reporting requirements.

And, we believe, these cardinal benefits of the Plan to the Agents have been lost sight of by many of the Agents due to preoccupation with the aspect of the Plan which requires three-times-a-month reporting, instead of the present twice-a-month reporting. This has, in turn, we believe, caused the Board itself to take an out-of-focus view of the Plan. Thus, references in the Board's Order to the Plan as being "more restrictive" on the Agents appear to us to reflect a failure to give adequate weight to the very real benefits the Plan offers to the Agents.

2. Why Area Bank Settlement is an Integral Part of the Standard Agent's Ticket Plan.

The Board observes, at page 5 of the Order:

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"In any event, it would appear that other stated benefits, e.g., a uniform ticket, volume purchases of tickets, central requisition source, etc., could be achieved through joint industry efforts not involving the area bank settlement portion of the Plan."

This observation warrants brief comment, if only to make sure that it does not give rise to any misconception.

If limited to the three precise areas stated therein — uniform ticket,

volume purchases, and central requisition — and if "uniform ticket" means uniform format, not the single ticket herein contemplated, the observation is technically correct. Indeed, the industry already has "uniform" tickets, in the sense that blanks for validation, routing, etc., are standard. (See, e.g., ATC Uniform Passenger Ticket and Baggage Check Resolution, Agreement CAB No. 3860; ATC Simplified Domestic Interline Ticket Resolution, Agreement CAB No. 10380.)

But, as previously noted, major benefits of the Plan to Agents arise from the single ticket stock, and the consolidated sales report. The latter would not, manifestly, be readily achieved without reporting to a central instrumentality, either an industry-operated clearing house, or an area bank. Nor could the single ticket stock for Agents be readily adopted, without central reporting. The single ticket stock entails the Agent imprinting the carrier's name on the stock at the time of ticket issuance. Accordingly, it would be extremely difficult for any one carrier to exercise effective ticket control, since reports to it would not show tickets sold, and have attached auditor's coupons, in numerical sequence.

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In developing the Standard Agent's Ticket Plan, the airlines recognized central reporting to be an essential element if major benefits were to flow to the Agents. For a number of reasons — including cost considerations — it was deemed preferable to have the Agent's reports channelled through a number of area banks, rather than to set up an industry-operated central clearing house.

Against this background, it should be clear that, as a practical matter the anticipated benefits to the Agents from a single ticket stock and a consolidated report cannot be expected from some form of "joint industry effort not involving the area bank settlement portion of the Plan."

3. Length of Reporting Period.

At present, most Agents submit sales reports to ATC carriers

twice a month, the report to be in the hands of the carrier not more than six calendar days after the close of the reporting period. (This six-day period is commonly referred to as a "grace period," and will be so styled herein.)

There are exceptions. Individual carriers sometimes require — or permit — particular Agents, or Agents in particular localities, to report more frequently, such as weekly. Carriers can permit Agents operating ten or more branches to report once a month (with the normal six-day "grace period") or three times a month (with a nine day "grace period"). There are four chain Agents of this size: American Express, Cook's, Ask Mr. Foster, and recently, Fugazy. The first two of these have varied as they have experimented with different internal accounting procedures: one of them is currently reporting to

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most carriers on the three-time-a-month basis, utilizing a central reporting system; the other, after trying both once-a-month and three-times-a-month central reporting, is currently reporting to most carriers twice a month, with each branch reporting separately. The Foster and Fugazy chains are currently reporting once a month.

The exceptions would be eliminated under the Plan. All Agents would report three times a month to the area bank, with a three-day "grace period." (The three days here, it should be noted, are working, rather than calendar, days.) The first paragraph on page 5 of the Board's Order indicates that it sees no objection to eliminating the exceptions, and there accordingly appears no reason to comment further here on that aspect of the matter.

The Board's Order does, however, raise questions as to the change from the normal 15-day to the new 10-day reporting period. The Board's questions appear to fall into three areas, which can be conveniently discussed separately. The first two seem to reflect objections by, or on behalf of, some Agents that (a) the five-day reduction of the report-

ing period could be an impediment to those Agents who might undertake to extend regular and substantial credit to customers, and (b) a work load problem would arise if the Agent were required to reproduce and deliver reports to the bank within three working days (or mail to the bank within two working days). The third area of Board interest appears to be the bank service charges and cash flow considerations which impelled the carriers to reduce the reporting period in order to cover the bank charges for the Plan.

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(a) Impact on the Agent who extends credit.

We have seen no data on the number or proportion of Agents who regularly extend credit in significant amounts, or the dollar volumes or time periods involved. The ASTA comments, to date, as served on the ATC carriers, have contained only very general argumentative material referring to alleged credit practices, and the Board's summation in its Order does not indicate that other comments it has received from Agents have been more specific. ^{1/}

But, whatever by-paths such data might lead into, we believe the Agents' "credit" arguments can be dealt with on the simple business principle that the airlines should not be expected to provide working capital for the Agent to extend credit.

The airline viewpoint is that the extent to which — if at all — an Agent extends credit is his business. He is an independent business man. The airlines do not purport to control his credit practices, to tell him what customers are good credit risks, and what bad, or otherwise to interfere with his business judgment on that score. By the same token, the airlines should not be expected to underwrite, in any way, the Agent's credit practices and his resulting risks, and, most particularly, the airlines should not be expected to, in effect, finance the Agent's credit extensions by permitting him to retain the cash (less commissions) collected by him from the public for airline tickets.

¹ The Board's Order refers, at page 2, to comments received from ASTA and eight named Agents. Of these, we have seen only certain comments of ASTA and the Foster, Fugazy and Cook chains.

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If the airlines were to be expected to provide working capital for Agents to extend credit, it would be appropriate to consider measures such as these: require the Agent to transmit daily cash actually collected, and to clear with the airline each extension of credit, both as to the credit risk involved, and the time and other considerations.

The airlines prefer — and believe the Agents prefer — the present system under which the Agent remits, on a date certain, for all tickets sold, regardless of whether he collected cash for all of them, or extended credit for all of them, or sold some for cash and others on credit. This is a sound business basis for the airline-Agency relationship; any basis which entails airline moneys being used to underwrite Agents' extensions of credit would seem ultimately to involve, in some degree, airline control of the Agent's credit practices. It would seem preferable to preserve the present separation of functions, with the Agent making his own decisions — and, by the same token, having sole responsibility for the results of his decisions — in credit matters.

For such reasons, we regard the "credit" arguments that have been advanced by the Agents as being — particularly in the present undocumented form — largely extraneous to the real issues presented by the Standard Agent's Ticket Plan.

Before leaving this topic, however, brief note should be taken of the Agent's argument to the effect that — and we here quote the Board's summary from page 4 of the Order —

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"with the accelerated remittances agents would frequently have to pay the carriers for tickets sold before collecting from customers; thus, it would be necessary for these agents to obtain at their own expense sufficient working capital to carry accounts for approximately 30 days."

We have supplied the underscoring because the 30-day reference is an almost classic non sequitur. If an Agent now extends credit for "approximately 30 days," and now reports and remits to the airline on a 15-day basis, he must be obtaining "at his own expense" working capital for such extension. A five-day reduction of the length of the reporting period may change, in some degree, his problem, but cannot be said to cause him to "carry accounts for approximately 30 days." If, on the other hand, a five-day reduction of the reporting period would "frequently" cause the Agent to pay for tickets before collecting for them — a situation which, by inference, does not occur under the present 15-day reporting periods — then the fact must be that Agents seldom extend credit for more than 15 days, and the 30-day reference is beside the point.

(b) Impact of the three-working-day "grace period."

The Standard Ticket Plan substitutes a "grace period" of three working days for the present allowance of six calendar days. The change to the working day — with Saturdays, Sundays and holidays excluded — has long been urged by ASTA, and we presume that there is, accordingly, no objection to reduction in the numerical factor, but, at most, a question whether the new number should be three, or perhaps four, or possibly five working days.

In our view, three working days is a fully adequate allowance, particularly in view of the simplification of the consolidated report, and the reduced work load

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in preparing it. Agent Joyce testified that "It is a physical impossibility for any one person" to complete the 20-odd individual carrier reports then required of his agency "in less than 56 hours." (Docket No. 8300, Tr. 233-234). Even in terms of the present system, his testimony would seem to involve some overstatement of the problem, since it is neither required, nor proposed to be required, that only one person prepare the report(s), or that the Agent wait until the report period has closed before starting on the report(s).

As previously noted, the consolidated report under the Standard Agent's Ticket Plan lends itself — much more than present individual carrier reports — to day-to-day preparation (or whatever work program the particular Agent might find convenient) so that, at the close of the report period, only one or two days' sales need remain to be entered. Accordingly, except perhaps in the case of some multiple-location Agents utilizing central bookkeeping (whose problem, as the Board's Order notes at page 5, is susceptible to solution on a basis which does not entail time allowances different from those generally applicable), no reason appears why the three-working-day "grace period" under the Plan would be inadequate.

As a further test of the proposal, one of the major domestic trunklines made a special study of reports for the period August 1-15, 1963 from approximately 4000 Agency locations holding its ticket stock. The results are illuminating and, we believe, typical. The trunkline found that — even under the present relatively complex carrier-by-carrier reporting system — it had received and banked

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remittances for 57.76 per cent of Agency revenues for the period by the close of the third working day after the period ended, and had received and banked 82.8 per cent of remitted revenues by the close of the fourth working day. Witness the following table:

<u>Elapsed working days</u>	<u>Percent of total remittances banked</u>	
	<u>That day</u>	<u>Cumulative</u>
1	3.20%	3.20%
2	28.07	31.27
3	26.49	57.76
4	25.04	82.80
5	12.98	95.78
6 and over	4.22	100

It is important to note that, as the underscoring in the preceding discussion of this study indicates, the count of elapsed working days is based, not on the date of receipt of the report by the carrier, or the date of completion or mailing by the Agent, but the date on which the carrier deposited the Agent's check in the carrier's bank. Allowing for the time-lag incident to internal carrier processing of the remittance^{1/}, it is abundantly clear that, even under the present multi-carrier reporting requirements, the overwhelming bulk of the Agents find it possible to complete and deliver their sales reports well within

¹ The last remittances covered by the study were banked on the ninth working day, involved 2.02% of the revenues, and covered a single city. The reasons why this single office did not make the bank deposit earlier are deemed not germane to the instant proceeding, however, interesting they may be to the carrier involved.

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the three working days that would be allowed under the Standard Agent's Ticket Plan. Here is a strong indication that the majority of Agents now report promptly at the end of a reporting period, and that relatively few Agents take maximum advantage of the present six-calendar-day "grace period." In any event, the study affords fresh evidence — if

such be needed — that the three-working-day allowance under the Plan, with its simplified consolidated report, will be fully adequate.

(c) Costs and cash flow.

The benefits which flow to the Agents from the Standard Agent's Ticket Plan entail certain costs. We believe these are minimal, and will, in fact, be heavily outbalanced by the cost savings to the Agents through the reduced work load under the Plan — whether these cost savings materialize, to a particular Agent, through direct reduction of operating expenses due to lessened work load for ticket control, accounting and sales reporting procedures, or through freeing for more directly productive use man-hours now spent on these procedures.

Two elements of "cost" of executing the Plan are here noteworthy: the validators which will accept the airline identification plates, and the bank service charges for handling the area settlement procedures.

The validator cost element can, we believe, be dismissed as of little, if any, real significance. The Agents — or some of them — will have to buy or rent new validators which will handle the airline identification plates necessary for the Standard Ticket. (Not all Agents will have to procure new validators solely because of the Plan. Many Agents have already voluntarily procured, or can be

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expected in the foreseeable future to procure, new types of ticket imprinter/validator equipment which permit the use of "routing plates" and similar imprinting devices and so reduce hand entries on the ticket. This is a matter of technological development. Most of these imprinters are, or will be, compatible with the airline identification plate under the Plan, so that, for technologically progressive Agents, the Plan will not require a validator which would not have been bought or leased in any event.)

The present thinking of the Interconference Committee,^{1/} as developed at its meeting of September 13, 1963, involves a validator which a

leading manufacturer of office equipment has offered at a price of about \$70 apiece in quantity lots. This price is about \$10 less per unit than for purchases involving single-unit purchase. It is also, it should be noted, somewhat higher than the earlier quotations of "from \$37 to \$50" noted in the Kelly letter of May 23, 1963, but the Committee is satisfied this is a more efficient and durable machine than those of earlier design, and so worth the price. Assuming that no better manufacturer's proposal develops prior to implementation of the Plan — and the Committee will, of course, be alert to any new proposals — the Committee would expect to make arrangements to offer validators to Agents at a purchase price of approximately \$70, or — at the Agent's option — an annual rental of approximately \$12 to \$14. Whether the rental is to be collected on an annual, semi-annual,

¹ A committee of air carrier personnel, some of which are designated by the Air Traffic Conference, and some by the Airline Finance and Accounting Conference, devised, and will administer the Plan. This is referred to herein as "The Interconference Committee."

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quarterly or monthly basis has not been decided, but the resulting charge of about \$1 a month should not, in our view, pose a financial problem for any Agent.

With respect to the bank service charges, the situation is this: the best available information is that bank charges can be expected to be about 2.5 to 3 cents per auditor's coupon processed, thus aggregating, as the Board has calculated, "at least \$210,884" per annum — but, in the Interconference Committee's view, quite possibly in the range of \$300,000 to \$350,000 per annum — based on 1962 traffic volumes.

The airline position has been, and continues to be, that these costs should not be thrown upon the airlines, but rather the Plan must be "self liquidating" with respect to the bank service charges. The most feasible

way of doing this has appeared to be reduction of the length of the reporting period for the Agents, thus enabling the bank service charges to be absorbed, in effect, from the improved "cash flow" to the airlines. Or, to put the matter somewhat differently, since the present "float" is to be used to defray the bank service charges, the airlines have felt -- and continue to feel -- that they could not offer the Agents the benefits of the Standard Ticket Plan and still let the Agents report only twice a month.

As was pointed out at page 8 of Mr. Kelly's letter of May 23, 1963, the ATC carriers' original draft of the Plan contemplated that the Agents would report and remit weekly, the report to be placed in the mail on Friday and to cover sales through the preceding Thursday. After a meeting with a delegation from ASTA in May 1962, the Interconference Committee reviewed the

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question carefully, and developed the proposal for three-times-a-month reporting, with a three-working-day "grace period," which is now part of the Plan.

This modification from weekly to three-times-a-month reporting was more than a "compromise"; it was -- and is -- the studied conclusion of the carriers that this is as far as they can go by way of concessions to the Agents on this point.

As Mr. Kelly correctly stated in his letter of May 23rd,

"... the issue boils down to just this. Since the carriers cannot be expected to assume the additional costs incident to implementing the Plan on a twice-a-month reporting basis, the only practical choice appears to be three-times-a-month reporting, or abandon the Standard Agents Ticket.

"... further progress toward accomplishment of the Standard Agent's Ticket Plan is possible only if all concerned start from this basic proposition."

The carrier analyses that led to the conclusion that the Plan's proposals with respect to reporting frequency were as far as the carriers could go reflected both individual carrier analyses and an industry evaluation.

Thus, page 2 of Exhibit I of the explanatory summary accompanying the ATC Resolution is the individual projection of a medium sized trunk, and page 3 of the same exhibit is the individual projection of a major trunk, each concerned only with the impact on the particular carrier.

Page 4 of the same exhibit is a study on a rough approximation of industry results, "assuming a \$2,000,000 per calendar day agency sales volume."

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This assumed figure, it will be noted, is a convenient round number for illustrative purposes and computations. It should not, however, be taken as a "pin pointed" figure. At the rate of \$2 million per day, agency sales volume would be \$730 million per year. This probably overstates the volume, in terms of sales of purely domestic air transportation by Agents, which was probably about \$500 million in 1962, based on total domestic passenger revenues (trunk, local service and helicopter) of approximately \$2 billion, and the traditional rule-of-thumb that 25 per cent of domestic revenues are generated by Agents' sales. On the other hand, the \$730 million per annum figure might not be too far off if one assumed that the bulk of Agents' sales involving international transportation by ATC air carriers would be ticketed under the Standard Agents Ticket Plan.

Accordingly, the exhibit is useful for illustrative purposes when it concludes that, based on a \$2 million per day Agency sales volume, the net cost offset per year to the airlines from improved "cash flow" under the Standard Ticket Plan would be \$300,000, assuming interest at 5 per cent per annum.

But footnote 6 at page 5 of the Board's Order carries the exhibit too far when it attempts to compare this \$300,000 round-figure with an estimated aggregate bank service charge of "at least \$210,884" based on the following computation: the Board's 1962 O&D survey shows 33,751,460 domestic tickets sold, of which — using the 25 per cent rule-of-thumb — "approximately 8,435,365 . . . would represent tickets sold by agents, and the area bank service charges, at 2.5 cents per item, would amount to at least \$210,884.

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If one is to compare the Board's footnote 6 figure, based on the minimum expected bank charges of 2.5 cents and purely domestic tickets, with the estimated cost-offsetting "gain" to the airlines, one cannot use the \$300,000 round-figure from page 4 of the carriers' Exhibit I since this is based on an approximation of Agency sales which would have to include a substantial number of non-domestic sales. Using the methodology of page 4 of Exhibit I, but assuming an annual Agency sales volume of \$500 million — or \$1.37 million per calendar day — for domestic air transportation, the "gain" to the airlines would be about \$205,000 — or about the same as the Board-computed minimum bank service charges of "at least \$210,884."

If, on the other hand, one wants to use the \$300,000 round figure, one must use a ticketing figure which is not limited to purely domestic sales, but which assumes that some number of international tickets will be sold on the stock of carriers participating in the Plan.^{1/}

The Interconference Committee which developed the Plan used, in its computations, an estimate, based on a survey of carrier experience for a representative period, of 900,000 Agency-issued tickets a month — or 10.8 million

¹ Footnote 6 of the Board's Order also undertakes an upward adjustment of the \$300,000 round figure on the basis that "a more accurate figure

may be in excess of \$450,000 when allowance is made for the greater average number of days cash is presently held by those multi-branch agents now authorized to remit monthly." Not having the detail of the computations underlying this sentence of footnote 6, we are reluctant to criticize it. But it should be noted that it involves substantial overstatement of the amount if it assumed that the four major Agency chains all presently reported once a month, since, as noted in the text near the beginning of Section 3 of these comments, only two of them in fact now report on a once-a-month basis.

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tickets a year — being processed under the Plan, which would indicate annual bank service charges, at the level of 2.5 cents per ticket, of \$270,000, or, at the level of 3 cents per ticket, of \$324,000. For planning purposes, this was deemed adequate, as indicating a probable level of bank service charges in the general range of \$300,000, or possibly \$350,000 per year; the Committee did not undertake, nor would we think it practicable at this date to undertake, a more precise measurement.

In this connection, it should be recognized that the precise level of bank service charges cannot be determined until there has been practical experience with the operations of the Plan. The bank which is presently regarded as the leading candidate for designation as the first area bank under the Plan has made a firm offer to provide services at 2.5 cents per coupon during the first three-month "trial period" — but has made very clear that this price is merely its best estimate, and is subject to adjustment in the light of experience. The bank has been very fair and very candid on this point, as is self-evident from the following passage from its letter of quotation:

"You have also inquired about our price for performing this service and I am sure that you agree this question is somewhat of a poser; nevertheless, we have given a great deal of serious consideration to a possible unit price which might be used during the trial period. We recognize the very generous attitude of the airline industry in want-

ing the participating bank to be adequately compensated for which we are most appreciative, however, at the same time, the proposal does entail a number of procedures which have never before been performed or measured. Under the circumstances the estimate of the cost exposure upon which a sound price must be based could be at a considerable variance from reality.

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". . . It is also recognized that many of the steps performed in connection with each flight coupon are closely related to the procedures we normally perform in the handling of a deposited check. Therefore, in the interest of providing the greatest amount of cooperation to the industry, we are happy to participate in this experimental operation and will be pleased to use as a price per coupon, the same price that we would use for a deposited item, namely 2-1/2 cents.

". . . In addition to the foregoing unit price, we should like to make arrangements with the respective airlines whereby we would be compensated for the postage expense involved in the mailing of the bulky packages of coupons and other material to them. We are quite willing during the three month trial period to be unconcerned with any added unit price in the interest of achieving the greatest possible amount of knowledge from the experiment."

Against this background, we submit there can be at this time no accurate "pin pointing" of the "costs" and cost-offsetting "gains" of the Plan. For planning purposes, it is evident that the level of bank service charges will probably approximate, within reasonable tolerances, the "gains" from improved "cash flow" to the airlines under three-times-a-month reporting. The planning has been well done; the airlines have been at pains to ascertain, as closely as can be done pending actual experience, the "best estimates" of the costs and offsetting "gains." They expect an approximate "wash" of bank service charges

against improved cash flow, and are satisfied that they cannot go further than the proposed three-times-a-month, with three-working-day grace period, reporting requirement of the Plan. It cannot, we believe, be held adverse to the public interest for the Plan to be implemented on this basis at this time.

At this point, we feel it incumbent to insert one clarifying — but, in terms of the real issues, virtually tangential — passage. The Board's Order

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observes, correctly, at page 5, "the principal objective [of the carriers] here is the recovery of added costs of the program rather than improvement of the carriers' financial position per se." The Order also observes, we think incorrectly, at page 4 that "it appears . . . that the carriers believe the major portion of the expense of the program should be borne by the agents." As indicated previously, we think the Standard Agent's Ticket Plan offers major and substantial benefits to the Agents, and we think it is unreasonable for the Agents to, on the one hand, seek these benefits, while, on the other hand, complaining because the bank service charges are met by reducing the length of the reporting period. Under these circumstances, we think a fairer statement would be to the effect that the Agents want the entire costs of the benefits they would obtain from the single ticket stock and consolidated reports under the Plan to be borne by the airlines.

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WILKINSON, CRAGUN & BARKER
WASHINGTON 6, D.C.

September 24, 1963

Civil Aeronautics Board
Universal Building
Washington 25, D.C.

RE: CAB Agreement 16874 — Standard Agents'
Ticket and Area Settlement Plan

Gentlemen:

Pursuant to the Board's Order E-19945, served August 26, 1963, the following comments are submitted on behalf of the American Society of Travel Agents, Inc. (ASTA).

Throughout the more than eighteen months during which the Area Settlement Plan Resolution has been under consideration by the ATC and the travel agency industry, ASTA has consistently and unequivocally adopted the position that a standard agent ticket and a single reporting form is a desirable method of improving the carriers' and the agents' operating efficiency. With respect to the specific proposal put forth by the Air Traffic Conference, it has been our objective to evaluate the benefits of the Plan in relation to the cost and administrative work which would be imposed upon travel agents. ASTA's conclusion has been, and is, that as far as the travel agency industry is concerned, the disadvantages of the Plan in its present form far outweigh the advantages.

In evaluating "why" the present Plan would have an adverse impact on travel agents, it is particularly important to realize that agents are caught in a spiralling cost-price squeeze as a result of static commission levels and constantly increasing administrative costs not helped by increased volume of sales. In addition, agents have been subject to, during the last year, onerous premium costs resulting from the ATC imposed bond. As the Board well knows, there is currently pending before it for approval CAB Agreement 17165, Docket 14727, relating

to passenger sales agency rules of IATA. Unless the bonding proposal which is strenuously opposed by ASTA is disapproved by the Board, the already astronomical premiums paid

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by travel agents on the ATC bond could be increased, perhaps by 100 per cent. Therefore, we urge the Board to view the instant agreement, as well as all of the travel agency industry's views concerning it, in proper perspective. The Area Settlement Plan cannot be looked at in a vacuum, but rather must be taken into consideration along with all of the other many impositions placed upon the travel agency industry.

In answer to the specific questions posed by the Board in Order E-19945:

(1) In ASTA's opinion, the Plan in its present form does not merit approval. While the use of a standard ticket and a single reporting form would be of benefit to travel agents, it should be noted that the effect of some new procedures to be instituted by the Plan, such as the requirement that agents compute their commission on each individual ticket sold, cannot be known until the Plan is actually implemented. It is clear, however, that an oppressive burden is put on the travel agent by the Plan's requirement that agents remit three times a month to ATC carriers while, due to the failure of IATA to participate in the Plan, they must continue to remit to IATA carriers at different times twice a month. To repeat: the presence of these elements in the Plan place substantial and undue burdens on travel agents without concomitant benefits.

(2) ASTA agrees with the Board's observations that
". . . it would appear that other stated benefits, e.g.,
a uniform ticket, volume purchases of tickets, central
requisition source, etc., could be achieved through
joint industry efforts not involving the area bank settle-
ment portion of the Plan."

We would ask that the ATC be required to thoroughly analyze this approach to the Plan and state why it believes that the Plan must involve area settlement bank participation. We would urge that, if at all feasible, the "standard ticket" be introduced without the establishment of area settlement banks.

(3) In the event that the Board is convinced that area bank settlement must be made a part of the Plan, then ASTA proposed specifically that one of the two following adjustments be made in the remittance requirements:

a. If IATA fully participates in this Plan, three times per month reporting would be acceptable, but the grace period following the end of each reporting period must be

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expanded to four working days, whether the remittance is sent by mail (postmarked by midnight of the fourth day) or personally deposited with the area settlement bank.

b. If IATA does not fully participate in this Plan it would be acceptable to ASTA only if travel agents are required to remit twice a month with not less than a 4-working day grace period, whether the remittance is made by mail (postmarked by midnight of the fourth day) or personally delivered to the bank.

In each of the above alternative proposals there would be improvement in the cash flow of the airlines over the current reporting requirements.

As the Board's order accurately observed, the principal issue involved in the Plan concerns the cost of implementation. It is our understanding from review of all material submitted by the Air Traffic Conference, that the only item of major costs which would be involved in the Plan would be the charges made in processing the tickets involved, assuming that area settlement banks remained in the picture. According to available statistics, travel agents sell approximately 8.5 million domestic air tickets each year. The cost of processing each ticket by

an area settlement bank has been estimated at from 2.5¢ per unit to 3¢ per unit. Assuming that a cost of 2.5¢ per unit were used, the total cost of implementing the Plan for one full year would be \$212,500. If a unit cost of 3¢ were used, this would rise to \$255,000 per year, still substantially less than the projected net cash increase which the carriers expect to realize from the Plan in its present form of \$300,000.¹

As the Board noted in footnote 6, page 5, of its order, the net cash benefit accruing to the airlines would increase from \$300,000 to \$450,000 per year, if the effect of increasing the remittance requirement for those agencies which now remit once a month to a three-times-per-month basis is taken into consideration. This amount is more than twice as much as the airlines would need to implement the Plan at an average processing cost of between 2.5¢ and 3¢ per ticket. As has been established by the ATC, and agreed upon by the Board in its order, multiple branch locations should not operate under procedures more liberal than those applicable to agents with single locations. Therefore, taking into account the impact of requiring all agencies to remit either twice a month with a 4-day grace period

¹Summary of Standard Agents' Ticket and Area Settlement Plan, Air Traffic Conference Exhibit 1, p. 4.

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(or if IATA participates fully, three times a month), the increased cash flow would apparently be substantial enough to absorb the total cost anticipated from the processing by area settlement banks of the standard ticket.

Any discussion of the cost aspects of this proposal must of necessity take into consideration the fact that the airlines will realize a substantial cost saving assuming this Plan is approved, resulting from the transferral of substantial administrative duties now performed by their own accountants and finance employees to the area settlement bank.

The extent of this benefit to the carriers must be taken into full consideration and we urge the Board to require the carriers to indicate precisely the dollar saving they will realize from either reducing their accounting and finance staff or freeing these personnel for other duties.

We are encouraged by the Board's observation that "...adjustment of carrier collection and credit practices in areas other than agency only"² is the proper way for carriers to improve their financial position.

(4) ASTA would like to reiterate at this point the following observations contained in its letter of November 29, 1962, to the Board concerning this agreement. At that time, we stated:

"It is interesting to compare, that while the ATC proposes that travel agents remit all funds for all tickets sold at the end of each 10-day period that the average elapsed time between ticket sale and receipt of payment under credit plans participated in by the domestic trunk carriers is 53.4 days.

"It is interesting to also note that the carriers are constantly encouraging the sale of air tickets on credit through such schemes as UATP cards, block ticketing, commercial accounts, tickets by mail, fly-now-pay-later plans, etc. At the same time, by this resolution the carriers would very seriously hamper the travel agents' efforts to promote and sell air transportation. If travel agents must labor under the burden of remitting to the carriers every 10 days, then ASTA insists that all who purchase tickets on credit be required to remit to the carriers under identical terms."

²E-19945, p.5.

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(5) As the Board recognized in page 6 of its order, the Area Settlement Plan will increase the risk of an agent becoming delinquent. We, therefore, urge that in addition to those modifications which we have suggested above, that the ATC be required to transmit any delinquency notices concerning an agent in writing signed by a responsible official of the carriers and describing in detail the reason and classification for the alleged delinquency.

(6) Under an amendment to the Plan (CAB Agreement 16874-A1) the Plan, if approved, would go into effect in one area of the country at a time. In its order, page 3, the Board, commenting on this, expresses concern that

"... complete implementation of the Plan could involve a substantial period of time, during which period some agents would be subject to the present procedures while others would come under the more restrictive provisions of the Plan, e.g., the increased number of remittance periods."

The Board goes on to note that "... this situation might create serious inequities within the agency industry ..." and the Board indicates that it wishes the carriers to specify "... the order in which [they] proposed to implement the plan in the various areas and the prospective time table." ASTA also shares the Board's concern that the Area Settlement Plan, if approved, should not be implemented in a manner that will substantially prejudice agents in the areas of the country chosen for early implementation. In light of this concern, ASTA urges the Board not to approve the Plan unless, on the basis of information that the carriers furnish the Board in answer to the question posed in the Board's order, the Board is satisfied that no substantial inequities will result from the manner in which the Plan is to be implemented area-by-area.

(7) In conclusion, ASTA requests that the Board ascertain the prospects of IATA's full participation in this program. There is some

recent indication that IATA will so participate in the near future. This is a most important consideration, since, as the Board itself has stated, "...absent such participation or recognition, it seems clear that the stated benefits of the Plan will fall far short of realization."³

Respectfully submitted,

WILKINSON, CRAGUN & BARKER

Attorneys for the American
Society of Travel Agents, Inc.

[Received Sep. 25, 1963]

/s/ Rocco C. Siciliano

³E-19945, p.3.

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ASK MR. FOSTER TRAVEL SERVICE

New York 16, N.Y.

September 26, 1963

Mr. James A. Saltsman
Chief-Agreements Section
THE CIVIL AERONAUTICS BOARD
Washington, D.C.

Re: CAB Order E-19945
Agreement CAB 16874 and
16874 A-1

Docket 14191

Dear Mr. Saltsman:

We have carefully reviewed the order of the CAB dated August 23, 1963, which we received on August twenty-ninth at New York, and we have read the comments of ATC before the CAB dated September twenty-third. Both papers have been given careful scrutiny by our executive staff, and we can only repeat what has already been spelled out in a letter to you of November 8, 1962 and our comments to the ATC of October 5, 1962.

We feel that an exception must be made in the case of our company since we have necessarily set up our airline reporting system to have the airline reports and payments made through and by our executive office, One Park Avenue, New York, New York. With our present book-keeping procedure it is imperative that we have an eight-working day grace period at the end of each of the three payment periods for any given month. Were we allowed to use an estimated amount for each of the payment periods, we would still require this grace period in establishing the exact payment due at the area bank for the subject period involved.

The plan appears to have been developed only with the one location, individual travel agency in mind and does not give due recognition to the company with multiple locations. The numerical sequence can be maintained as mentioned in the ATC report, but we will have it for each of our forty offices. The plan is

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not all that helpful to a firm of our size.

The other aspects of the order we can conform to without undue expense, but we would have to incur a sizable increase in operating expense for more staff at each location to comply with the order as it now stands. This expense could run in excess of \$100,000 per year.

If the plan cannot be modified to make allowances for firms of our size and present structure, we will be forced to appeal through appropriate channels for help.

Sincerely,

ASK Mr. FOSTER Travel Service, Inc.

/s/ Thomas C. Orr
Executive Vice President

[Received Sep. 30, 1963]

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ASK MR. FOSTER TRAVEL SERVICE
New York 16, N.Y.

November 6, 1963

Mr. James A. Saltsman
Chief-Agreements Section
THE CIVIL AERONAUTICS BOARD
Washington, D.C.

Re: CAB Order E-19945
Agreement CAB 16784 and 16784 A-1
Docket 14191

Dear Mr. Saltsman:

The docket will indicate that we last wrote the CAB on September twenty sixth with respect to the above order. We naturally are concerned as to the status of this Standard Agents Ticket Plan.

Everything put to print to date seems to completely overlook the serious problems of the agent with multiple locations. In our opinion, there is definite discrimination against our type of operation, and we cannot understand the logic behind the ATC's plan when they completely overlook companies such as ours.

We, of course, stand ready to sit down with interested parties to work out some sort of a middle ground that would help move the whole plan along to a successful implementation.

We don't want to see any of our offices come under the plan as presently suggested, even during a trial period. Our Chicago office would be affected by a plan started in Illinois.

We would like to have a comment from you as to what could be done to allow exceptions during any trial period that might be effected by the Board and ATC.

Sincerely yours,

ASK Mr. FOSTER Travel Service, Inc.

/s/ Thomas C. Orr
Executive Vice President

[Received Nov. 7, 1963]

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Order No. E-20741

ORDER APPROVING AGREEMENT

On August 23, 1963, by Order E-19945, the Board deferred action on resolutions of the air carrier members of the Air Traffic Conference of America (ATC) entitled "Standard Agent's Ticket and Area Settlement Plan" (Plan), pointing out that the agreements raise problems of concern to the Board and affect significantly the interests of the carriers and the travel agency industry. The order indicated the Board's desire to be further advised on the matter and provided an opportunity for all interested persons to present formally their views. Comments were filed by 22 members of ATC (the carriers), in a joint statement, and by the American Society of Travel Agents (ASTA) and a number of individual agents. ^{1/} Upon consideration of all such responses the Board has decided to approve the resolution under section 412 of the Federal Aviation Act of 1958, as amended (the Act), subject to certain conditions.

To review briefly the Plan's chief characteristics, ATC-appointed agents would be required to use a single standard form of ticket in the sale of passenger air transportation wholly within the continental United States, Canada, and Hawaii. The Plan would be optional for on-line tickets involving travel to or from points outside that area, and it is the carriers' hope that the standard ticket will be acceptable for interline travel by all airline members of the International Air Transport Association (IATA). Agents would report sales and remit moneys due carriers to a designated bank in one of several prescribed geographical areas instead of separately to each carrier principal. The designated area bank would review agents' reports, distribute

^{1/} The individual agents and ASTA will be referred to at times herein as "the agents".

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the remittance due each airline, and notify the Secretary of the Airline Finance and Accounting Conference (AFAC) of an agent's failure to report or of other irregularities. The banks' service charges, and the cost of the standard ticket and other forms required would be borne by the members of ATC. Agents would be required to report sales and remit cash to the airlines more frequently, and sooner after the close of the reporting period than under present rules, and to acquire from AFAC an industry-approved ticket validator designed to accept airline identification plates which would be supplied by each carrier principal. The potential benefits ascribed to the Plan by ATC, recounted in Order E-19945, include, principally a reduction in agents' workload through use of one universal ticket form with a resultant reduction in the number of sales reports and in types of ticket stock required. For airlines, the Plan is expected to improve cash flow, eliminate competitive pressures among them by having the agency rules relating to delinquency and default administered by an impartial organization, eliminate considerable administrative detail relating to agency matters and minimize the ticket inventory burden.

Comments of the agents and the carriers on various problems resulting from this change in business relationships, and the Board's conclusion on each are given below.

Number of Reports and Remittances per Month
and Length of Grace Period

A requirement to report and remit 3 times monthly would apply to all ATC agents, and is an increase from present rules providing for semi-monthly reporting with an exception permitting agents operating ten or more locations to report once a month. In addition, the Plan would require the report and remittance of all agents to be delivered to the designated area bank within 3 working days following

the last day of the reporting period, or, if mailed, postmarked by midnight of the second working day. Under the comparable requirement of the presently effective ATC Agency Resolution, the report and remittance must be received by the carrier within 7 calendar days of the close of the reporting period, or, if mailed, postmarked within 5 calendar days. 2/ These changes in procedure would improve the carriers' cash balances in return for payment by them of the principal recurring cost of the Plan, viz., the area banks' service charges, and of course, would reduce the cash balances held by the agents.

Agents' views: A number of agents expressed the fear that they will be forced out of handling commercial accounts and compelled to close down or abandon domestic air business if they are required to remit every 10 days (and by implication required to bill their customers every 10 days or else procure additional capital)

2/ One agent operating approximately 40 ATC-authorized locations which already reports 3 times monthly is permitted a 9 working day grace period under the present rules.

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while the carriers make credit available under their Universal Air Travel Plan (UATP) on a monthly billing basis. The request was made that, if agents are required to remit 3 times per month, manufacturing companies, wholesalers, and other commercial customers who also hold carriers' ticket stock be required to do likewise. The view was expressed that improvement in the carriers' cash flow is the Plan's prime objective with any economies to agents of distinctly secondary importance. However, certain agents accepted the necessity of improved cash flow to the carriers from 3 remittances monthly as a means of paying for the Plan. ASTA also supported the 3 remittance feature subject however, to an upward

adjustment in the grace period and full participation in the Plan by IATA.

Turning to the shortened grace period, several agents commented that, aside from the effect upon their working capital, there would likely be required costly overtime work or hiring outside help to complete sales reports on time. Ask Mr. Foster Travel Service, Inc. (Ask Mr. Foster) and Thomas Cook & Son Incorporated (Cook), both of which would have approximately 40 ATC-authorized locations coming under the Plan, indicated that although they would continue to require, respectively, 8 and 9 working days to submit full actual reports under their present centralized accounting procedures, they would be willing to remit, within the newly required time limit, an estimated amount due the carriers for the preceding report period. 3/

Finally, some agents continue to contend that the increase in the number of reporting periods from 24 to 36 per year coupled with the shortened grace period for preparing the report inherently increases the risk of delinquency citations and ultimate withdrawal of ticket stock. 4/

3/ Cook proposed that an estimated amount equivalent to 7 working days' sales (the difference between the Plan's 2 working day grace period where the report is mailed and Cook's own requirement of 9 working days) be remitted to "and held by" the area bank. However, as indicated in Order E-19945, Fn 5, p. 5, the Board understands that estimated remittances, as soon as they clear, must be distributed on some equitable basis in order for the carriers to secure the necessary cash flow improvement to justify paying the bank service charges.

Subsequent to the period allotted for responses to Order E-19945, Ask Mr. Foster, by letter dated November 6, 1963, stated that it did not wish any of its offices to come under the Plan, even for a trial period. The letter, which we shall accept although late filed, expresses concern over the problems of multiple-location agents, but presents no new information on the matter.

- 4/ The Plan, as does the basic Agency Resolution, provides for monthly listings of agents not remitting within the specified grace period. Withdrawal of airline identification plates, ticket stock and exchange orders is required where an agent appears on such lists four times during any twelve consecutive months.

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Carriers' views: As concerns agents' working capital, the carriers maintain that the extent to which an agent extends credit is his business as an independent business man; that the carriers should not be expected to finance such credit extensions by permitting the agent to retain cash (less commissions) collected from the public for airline tickets; that any other course would ultimately involve airline control of the agent's credit practices; and that the present separation of functions seems preferable to the carriers and, it is believed, to agents.

As to the length of the grace period, the carriers comment that the use of one consolidated report, with one numerical sequence, and with no need to segregate by carrier the auditors coupons for tickets sold, would make it easier for agents to post the report on a daily basis; that the time spent by agency personnel on ticket control, accounting and reporting would be reduced; and that the shortened grace period accordingly should be adequate. As an example that a longer period is not really needed, there was presented a summary of a study by a major trunkline with 4,000 agency locations for the period from August 1 to 15, 1963, showing that, even under the present rules permitting seven calendar days, 57.7% and 82.8% of agency revenues were received and banked by the carrier by the third and fourth working day, respectively, after the period ended. Finally, the carriers maintain that the risk of an agent being temporarily suspended as delinquent should be decreased, because the simplified report is expected to make possible more expeditious

completion and transmittal at the end of the period, and because there will be few or no occasions when an agent would have nothing to report; failure to send a "no sales" report has been a substantial cause of delinquency listings in the past.

Board's views: The Board has concluded that, to the extent required to offset the bank service charges, the change to three times monthly reporting is reasonable; however, we also believe that the grace period should be adjusted as discussed hereinafter.

As noted above, the argument is made that agents are in the same position as the carriers' commercial and other UATP customers and, accordingly, should be permitted to observe the same monthly remittance frequency. This argument overlooks important differences between an agent and a carrier's direct retail customer. The latter, of course, is the actual user of the air transportation purchased, does not receive a commission on the purchase and, as we have elsewhere determined, is entitled to the reasonable use of free convenience credit such as provided by the UATP. 5/

5/ See Passenger Credit Plans Investigation, Docket 10917, Order E-19197, January 16, 1963, pp. 6-18.

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By contrast, an agent is not the purchaser or user of the air transportation, but rather acts as an instrumentality of the carrier in selling such service for a commission. The special position of the agent long has been recognized, in the Agency Resolution, by a rule providing for remittances on a basis other than that normally employed in a retail credit sales transaction-twice monthly for all but a handful of agents. 6/ When an agent makes a sale of air transportation to a client, the amount of the sale, less commission, belongs to, and is available for collection by, the carrier principal.

The rule calling for more frequent remittances by agents than required of the carriers' own retail customers reflects this fundamentally different nature of the agency relationship. Under the circumstances, we conclude that it is not unreasonable for the carriers to establish rules for agents different from those applicable to the carrier's direct retail customers, and that they are not obligated to provide agents with a certain level of working capital in order to underwrite credit extensions or for other purposes. Regardless of the competitive climate, the provision of such funds is clearly a basic responsibility of the Agent.

The Board notes that Fugazy Travel Bureau, Inc., (Fugazy) opposes the requirement for 3 remittances monthly, stating: "As long as the multiple-location agent has had to remit to the airline once each thirty days, he has been able to extend approximately thirty days credit to the large commercial account. By requiring the multiple location agent to remit every ten days, the carriers will make it impossible for Fugazy to continue to serve such accounts." Fugazy indicates that its current volume of business is \$35 million, of which more than 90%, or approximately \$32 million, is done on credit, and that it cannot finance this volume of credit business. Fugazy argues that multiple-location agents provide a number of advantages to the traveling public justifying preferential treatment of such agents in the matter of remitting to carriers only monthly; that the practice is of long standing under Board approval; and that since this privilege can be taken away only by Government action, Fugazy should be granted a hearing. Fugazy cites cases, involving Board suspension of and narrowing of exemptions to perform air transportation, in which the courts required the Board to afford the carriers an opportunity to be heard, as well as cases arising before other administrative agencies where the courts determined that the constitutional protection of due process requires a hearing before property, rights or privileges could be withdrawn.

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- 6/ This frequency was established by an amendment to the Agency Resolution (Agreement CAB 403-A15) adopted by the members of ATC on June 30, 1948. The amendment deleted an existing requirement for four remittances per month. In their comments herein, the carriers state that individual carriers still sometimes require particular agents or agents in particular localities to report more frequently than twice a month.

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While Board review of agreements filed under section 412 of the Act does not require an evidentiary hearing, we have considered whether the Board should grant Fugazy a hearing in the exercise of our discretion. Fugazy has made no affirmative showing that a hearing would yield any pertinent facts not already before the Board, and there do not appear to be any significant disputes of fact which require resolution. We therefore conclude that a hearing would serve no useful purpose, and Fugazy's request for a hearing will be denied. 7/

Fugazy also opposes the proposed length of grace period within which the remittance must reach the area bank and any mandatory requirement for branch reporting directly to area banks. As discussed hereinafter, our action on the agreements will be conditioned to minimize these problems for agents, such as Fugazy, which operate 10 or more offices.

While we are in agreement with the change to 3 remittances monthly, we believe that, based upon the estimates contained in the Plan, the gain to the carriers from the projected improvement in cash flow would be somewhat in excess of the estimated cost of the area banks' service charges to be paid by them. 8/

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- 7/ Fugazy's contention that the Board is passing on his "property" rights without granting a hearing misconceives the nature of the Board's action in the ATC Resolution Investigation, Docket

8300 (29 C.A.B. 258, 1959) and in other related proceedings which approved joint carrier agreements affecting travel agents. The Board, under the authority of section 412, passed upon joint carrier agreements to insure compliance with the Act. The Board did not license travel agents or otherwise confer on them any authority or property rights.

8/ The agreement contains an estimate (Exhibit I, p.4) showing that, at a daily agents' sales volume of \$2 million (which includes a substantial volume of international sales), the Plan would produce a gain to the carriers as a group of \$300,000 per annum (on a 5% interest basis used throughout these calculations). This reflects an arbitrary assumption that the carriers' cash balances would be increased to the extent of 3 days' agents' sales, or \$6,000,000; however, the Exhibit does not allow for the greater average number of days cash is presently held by agents now authorized to remit monthly and/or afforded longer than average grace periods, so that the improvement is significantly understated. Thus, figures contained in the agreement for two individual carriers (Exhibit I, p.2 and p.3) showing actual collections of agents' sales under present rules in comparison with the way they would be scheduled under the Plan indicate, respectively, an improvement in cash balances of \$161,756, or 4.3 days' sales, and \$1,653,292 or 4.9 days' sales. Averaging out this improvement at 4.8 days and applying it on an industry basis would produce an improvement of \$9,600,000, equivalent to a \$480,000 gain per annum. In their comments, however, the carriers indicated that the bank service charges on a \$2,000,000 daily volume of business would amount to only \$324,000, even at 3 cents per item. Accordingly, the gain to the carriers is \$156,000 in excess of the service charges that they would have to pay; we estimate that approximately \$144,000 of this excess is eliminated by the addition to the grace period of one working day. A substantially similar result is obtained if the calculations are based on estimated agents' sales and tickets sold for domestic business only.

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Although it is reasonable for the carriers to make sufficient improvement in cash flow to offset this major recurring cost of the Plan, we fail to see any justification for going further than necessary, particularly in view of the direct impact this would have upon the cash balances held by the agents. Accordingly, we shall require an increase in the grace periods of 3 working days where the report is delivered to the area bank, and 2 where it is mailed, to 4 and 3 working days, respectively.

Aside from ameliorating what the carriers' figures indicate is an over-compensating increase in cash flow, the change may provide a somewhat better opportunity for agents operating 10 or more offices and using central reporting to submit reports within the required time.^{9/} However, certain of these agents may have difficulty in adjusting their internal procedures so as to accomplish this, and they may not wish to institute branch reporting directly to area banks as an alternative. The Board believes that such agents should be permitted to make estimated remittances, provided that the procedures by which this is accomplished do not result in a more favorable effective time allowance than is accorded to agents generally under the Plan. Therefore, we shall condition our approval of the agreements to permit estimated remittances by agents operating 10 or more ATC-authorized locations and using central reporting. We also shall require that a resolution setting forth procedures governing estimated remittances be filed with the Board not later than one month prior to the date scheduled for implementation of the Plan in the initial bank area. Such procedure should specify fully the basis to be used for computing the estimated remittance, the basis to be used by the area banks for distribution of the estimated amounts to individual carriers, the time within which, and method by which, settling adjustments are to be effected, and any other information which has a bearing on

whether the arrangement is equitable to the carriers and agents directly concerned, and to others.

Further, the change in grace period should compensate, at least partially, for any increased exposure of agents to citation for delinquency which may result from the short grace periods and new remitting frequencies contained in the Plan.^{10/} To be sure, the reduction in paperwork provided by the Plan should facilitate preparation of the sales report throughout

^{9/} For example, it would permit branches one working day to complete a standard report and mail it to the home office, one working day in-transit time and one working day (plus part of a second if the report is delivered rather than mailed to the area bank) to check and combine the reports of the various branches.

^{10/} The adjustment will provide only slightly less liberal grace periods than are contained in the currently effective agency resolution which allows 7 and 5 calendar days after the last day of the reporting period, depending upon whether the report is delivered or mailed. Converting to average working days (by allowing for Saturdays, Sundays, and holidays), the present requirement is about 4.8 and 3.5 days.

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the reporting period; however, we note that the Plan requires considerable arrangement of items in the report according to whether they are single, two or four coupon tickets, other traffic documents, refunds, or commissions on credit sales. This may cause some peaking of work at the end of the period which, again, would support some relaxation in the grace period.

In addition, we believe that the threat of withdrawal of airline identification plates and ticket forms should be abated during an agent's period of initial familiarization with the Plan. To this end we shall require that outstanding delinquency citations within the preceding 12 months be voided as of the date an agent enters the Plan.

Acceptability of the Standard Ticket in
International Air Transportation

ASTA and certain individual agents state that, without all IATA carriers participating fully in the Plan, an agent, unless he represents ATC carriers only, would be required under the Plan to report and remit three times per month to an area bank for sales made for ATC members and, exclusive of the Plan, twice a month to each individual IATA carrier he represents. It is argued that such reporting at separate times to domestic and international airlines represents an additional burden or, at best, no reduction in agents' workload, and that the Plan should not be approved by the Board unless and until also adopted by IATA member airlines.

The carriers state that by far the greater number of air tickets sold by United States agents are either for wholly domestic transportation or represent an international journey partially or wholly via ATC carriers. In any case, the carriers feel, and certain agents agree, that the Plan has benefits for agents regardless of the extent to which it ultimately may be made applicable to international air transportation.

The Board recognizes that the Plan, in its present form, does not offer those agents which represent both ATC and IATA carriers the same potential for operating efficiencies which would be available in a plan standardizing ticket forms, reports and remittances for all sales of domestic and international air transportation. However, as noted, the agents' large domestic ticketing workload would be brought entirely under the Plan. In addition, the Plan permits use of the standard ticket and other procedures for travel between a point in the continental United States, Hawaii and Canada and a point outside that area where the transportation is performed entirely by one ATC member or where it consists of an interline journey involving two or more ATC carriers only. ^{11/} Also, nothing precludes acceptance of the standard ticket in

^{11/} It is understood ATC intends that such transportation in fact be under the Plan, unless special circumstances in particular instances dictate otherwise.

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interline transportation by IATA carriers. ^{12/} Further, the fact that the Agents' reports to ATC and IATA carriers would cover periods of different length and would not always be due on identical days of the month is not in our opinion, a critical factor. Thus, the Board believes that the actual and permissive areas for operation of the Plan suggest sufficient benefits to justify proceeding here without first resolving all of the uncertainties as to the extent of future participation by IATA carriers.

Timetable for Implementation
of the Plan

In Order E-19945, the Board expressed concern over possible difficulties that might arise should implementation of the Plan in the various bank areas extend over an indefinite, perhaps substantial, period of time. In this connection, the agents' comments include a request that multiple-location agents using central accounting procedures be excluded from the Plan until such time as a single remittance can be accomplished to one area bank in the United States and to one in Canada. The carriers, in their comments, express the belief that a precise timetable should be determined only after the 180-day implementation period in the initial bank area, and that the Plan thereafter probably should be extended to one or two additional bank areas every 30 to 60 days.

We remain concerned over the uncertainty as to time required to implement the Plan fully and, therefore, will impose certain conditions in this regard.^{13/} Although the Board recognizes the

desirability of area-by-area implementation, particularly from the standpoint of adequate indoctrination of agents, the amount of time allowed by the resolutions in the first bank area seems excessive. Thus, the Board will require that the period from initial implementation to the filing with the Board of a resolution on expanded implementation, elimination or modification of the Plan be limited to 6 months. ^{14/} Secondly

^{12/} Former IATA Resolutions 275 and 275f dealing, respectively, with the form of ticket required and the interchange of on-line passenger tickets were rescinded and replaced by Recommended Practices 1275(a) and 1275(f) effective December 1, 1962. This action, approved by the Board by Order E-19103, dated December 17, 1962, appears to have eliminated any prohibition against acceptance of the standard ticket by members of IATA.

^{13/} As noted in Order E-19945, Agreement CAB 16874-A1 provides that the Plan may be implemented in one bank area at one time; that, it will be reviewed 180 days after initial implementation to determine costs and degree of attainment of objectives; and that, based upon such review, the Executive Secretary of ATC, within 255 days of initial implementation will prepare a resolution recommending expanded implementation, elimination, or modification of the Plan. A further period of time beyond the 255 days would be required for Conference action and the filing of the resolution with the Board.

^{14/} The Board contemplates that the plan would be reviewed at the end of 4 months instead of 6 months as contemplated in the Plan, and that such review and further ATC action would be accomplished in an additional 2 months.

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assuming, as we do, that the decision then favors extension of the Plan, it is our belief that the interests of all would be best served by rapid implementation in all other areas. We shall require that the resolution submitted to the Board at the end of the six-month initial

implementation period incorporate, or be accompanied by, a statement showing the order of implementation of the Plan in remaining bank areas, the date planned for each such extension and the name of the bank(s) designated for each area. Thereafter, and until the plan is fully operative, there shall be filed a recurring report showing the actual progress against the schedule, or any changes therein. We shall also require the filing of a statement of the results of the review of the Plan in the first bank area; copies of instructions by ATC and AFAC to agents at the time of issuance; and, other data pertaining to implementation of the Plan as specified elsewhere in this order. Finally, we shall condition the agreement to provide that an agent operating offices in more than one bank area and using central reporting be given the option of entering the Plan at any time up until the Plan becomes effective in all bank areas in which that agent has offices. 14A /

Validator Cost and Specifications

As indicated in Order E-19945, the Plan would require agents to acquire from AFAC an industry approved validator-ticket writer. 15 / A number of agents have expressed concern over having to pay for the new type of validator, at least one of which would be required at each office operated. These agents consider this to be one more business cost which may or may not be offset by improved operating efficiency, and they assert that the carriers should assume the obligation of providing the machines.

The carriers indicate that the validator they are now considering would cost about \$70 a piece in quantity lots and would be offered to agents at that price, or at an agent's option, on a rental basis of approximately \$12 to \$14 annually. The carriers also indicate that many agents are already voluntarily procuring new types of ticket imprinter-validator equipment which will be compatible with the airline identification plate under the Plan, so that the Plan will not require, for such agents, a validator which would not have been acquired in any event.

The Board believes, to assist implementation of the Plan, and during the initial six-month period only, that one of the required validators should be supplied for any agency location made subject to the Plan upon the request of and at no cost to the agents involved.^{15A} Thereafter, with respect to such

14A/ We recognize that, during the earlier stages of implementation of the Plan, such agents may not wish to adopt the new procedures on a partial basis. This reflects the inherent difficulty of operating any business enterprise under two separate sets of rules; however, we do not intend that this differentiation between multiple-branch and single location agencies continue for any extended period and, as already indicated, will encourage prompt extension of the Plan to all bank areas.

15/ The Board understands a validator-ticket writer (validator) to be a single piece of equipment.

15A/ We believe that, since the carriers have reserved the right to review the operation of the Plan prior to full and final implementation in all bank areas, it is appropriate for them to bear, to the full extent practicable, the economic risks should it not be thus implemented.

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agents and those who enter the Plan at a later date, the Board contemplates that the carriers will develop an equitable program under which agents can lease and/or purchase the equipment. The Board will require that the carriers' resolution on this matter be filed under section 412 of the Act, with all pertinent costs details, by the end of the initial six-month period. ^{16/}

Use of Airlines Clearing House

In lieu of Area Banks

In Order E-19945, the Board raised a question as to whether such benefits of the Plan as a uniform ticket, volume purchases of tickets

and a central requisition source could be achieved through joint industry efforts not involving the area bank settlement portion of the Plan and attendant costs. In responding to the order, ASTA urged that, if possible, the standard ticket be introduced without the establishment of area settlement banks and, by letter filed December 23, cited certain recently obtained statistics as evidence that agents' remittances could be processed through the Airlines Clearing House for far less than the estimated area bank settlement charges.¹⁷ This, ASTA argued, would obviate the need for increased remittance frequencies.

The carriers state that the major benefits of the Plan to agents -- the use of single ticket stock and a consolidated sales report -- could not be achieved without reporting to a central instrumentality, either a clearing house or an area bank and, because of cost considerations, the latter alternative was deemed preferable. In a response to ASTA's letter, filed December 30, 1963, ATC points out, further, that the Airlines Clearing House does not process individual flight coupons, but works only from recapitulation of interline invoices, with the actual settlement being performed by a single New York Bank.

From the foregoing, it would appear to the Board that the present Airlines Clearing House operation, involving primarily a set-off of balances due among carriers, is not readily adaptable to handling the workload which would be involved in processing individual agents' sales reports and supporting auditors coupons. Accordingly, no useful purpose would be served by further delaying

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Since the agents are being asked to pay for the validators, the Board would expect the carriers to develop a machine sufficiently versatile to accept existing ATC and IATA carrier ticket stock and adaptable to the needs of IATA should the members of that organization later join in the Plan. This would avoid a duplicate expenditure for two separate pieces of equipment with essentially identical validating functions.

^{17/} Since information cited in ASTA's letter filed December 23, 1963 only recently became available to ASTA, we shall permit the late filing of such letter and of ATC's response thereto.

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action on the Plan for a determination as to whether some other type or types of clearing house arrangement could be devised which might eventually prove feasible.

Reduced Carrier Risk of Loss
vs. Agents' Bond Coverage

ASTA points to a provision of the Plan, not heretofore included in the Agency Resolution, permitting the withdrawal of ticket stock, exchange orders and airline identification plates from an agent who has failed to remit in full to an area bank within 10 days after the remittance was due. ^{18/} ASTA maintains that there is no justification for such a rule, since there is ample protection of the carriers' interests in the already existing provision relating to default and termination of an agent's sales agency agreement for failure to remit within 15 days of the due date.

The Board believes that the provision may be of possible advantage by providing, upon an agent's failure or delay in reporting, an intermediate procedure less stringent than the outright termination of the agency agreement by ATC which occurs after 15 days. However, we note that the number of days from the beginning of the report period to the date ticket stock is withdrawn is 31 under present rules (for a 30 day month) and 20 under the Plan, a reduction of 35%. ¹⁹ The Plan effects no reduction in the amount of bond which agents are required to maintain, despite this reduction in risk of loss to the carriers. Under the circumstances, a percentage reduction in the amount of agent's bond might be appropriate and could well apply, not only to the requirement based on gross sales of air transportation, but to minimum and maximum requirements as well. This is a

matter which the Board expects the carriers to consider fully in their continuing review of bonding and, unless sooner adjusted, to be dealt with by resolution or report to the Board, not later than the end of the six-month initial implementation period.

Retention of Ticket Stock Until
7 days after Satisfaction of
Amounts Due

The Plan provides that where ticket forms, exchange orders and airline identification plates have been withdrawn from an agent for failure to remit to the area bank, they shall not be returned to the agent until 7 days after the Executive Secretary of ATC mails a notice to each member that he has been

18/ The Board understands that the intent of the resolution is to refer to a date 10 days after the last day of the report period, and so interprets the provision.

19/ For agents with 10 or more offices presently reporting monthly the number of days a potential default can build up would decrease from 46 to 20 or by nearly 57%. The exposure here has existed as an exception to the general rule, the present mandatory bonding requirement being keyed roughly to a risk of loss period of one month.

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advised that the agent has satisfied or adjusted all amounts due any member.

ASTA has pointed out that used in conjunction with the 10-day rule, the provision would permit removal of an agent's ticket stock for a 7-day period even though he was never held in default. By letter of June 20, 1963, ASTA also objected to the similar 7-day provision in the presently effective Agency Resolution, applicable to reinstated agents. 20/

Although the Board notes that the 7-day rule in the basic resolution is of long standing, we presently see no significant useful purpose in requiring a reinstated agent, or one who has satisfied all amounts due carriers, to wait an additional 7-day period before resuming operations. Accordingly, our approval herein shall not extend to the 7 days waiting period provided for in Paragraph 15 of the resolution. Should the instant agreements for any reason not be finally adopted by the members of ATC, we shall expect similar elimination of the 7-day rule from the basic Agency Resolution.

Finally, it is to be noted that certain comments received indicate skepticism as to various other features of the Plan. Thus, one or more agents maintain that the effect of a new procedure requiring the agents to compute the commission separately on each ticket cannot be known until the Plan is implemented; that it would be simpler to continue to use individual carrier ticket stock rather than to have to change constantly the airline identification plate in the validator; that the Plan is of no help in relation to agents' existing internal procedures; that an agency should be allowed to use its own report form which is adaptable to its existing accounting machine equipment; and, that discrepancies and "items in dispute" will be more difficult to settle as between airline and agent because of the injection of a third party with no knowledge of such matters as fares and routings, but with full power to determine agents' delinquencies.

Such comments, reflecting understandable concern over the extent of proposed changes in procedures, equipment and report and ticket forms point up, we believe, the difficulty of developing a program of the magnitude here involved which would satisfy all of the needs or provide equal benefits to more than 4,000 individual agents having different overall business activities, operating problems and automation requirements. The Board recognizes that the Plan is likely to be considered more satisfactory by some agents than by

others, and that, in fact, it will not be free from all difficulties or provide equally advantageous adjustments to each and every segment of the

^{20/} Such comments were submitted in connection with a pending amendment to the ATC Agency Resolution (CAB 5044-A97). It appears appropriate, however, to deal with the matter in the context of the instant resolutions.

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agency industry. Nevertheless, we have concluded that, viewed broadly, the Plan represents a worthwhile forward step in the continuing development of conference procedures under which agent-carrier business affairs are conducted, and that it can be of significant practical benefit to individual agents and carriers alike. On this basis, we find that the agreements, as conditioned herein, are not adverse to the public interest or in violation of the Act.

Certain provisions of the instant agreements common to the basic Agency Resolution have been amended as to the latter only.^{21/} Also, as indicated herein, we understand that the Plan is intended to be effective in Hawaii, although the present text does not so provide. We assume that these subsequent revisions will be reflected in the text of the Plan at a suitable opportunity.

ACCORDINGLY, IT IS ORDERED:

1. That Agreements CAB 16874 and 16874-A1 be and they hereby are approved subject to the conditions enumerated below:

2. That an agent be permitted 4 working days from the last day of the reporting period within which to physically deliver the report and remittance to the designated area bank; if mailed, the report and remittance may be postmarked not later than midnight of the third such working day;

3. That an agent operating 10 or more ATC-authorized locations making a combined report and remittance for such locations be permitted to do so in the form of an estimate, and that the carriers' resolution establishing procedures for accomplishing this shall be filed with the Board under section 412 of the Act not later than one month prior to the date of initial implementation of the Plan; ^{22/}

4. That, for purposes of Paragraph 16 of Agreement CAB 16874 and Paragraph VII C of the basic ATC Agency Resolution, outstanding delinquency citations, if any, shall be voided as of the date an agency or any of its ATC-authorized locations enter the Plan;

5. That the resolution to be prepared by the Executive Secretary of ATC proposing expanded implementation, abandonment or changes in the Plan be acted upon by the carriers and filed with the Board under section 412 of the Act not later than six months from the date of initial implementation of the Plan;

^{21/} CAB 5044-A95, treating the subject of agents not under appointment by a carrier, approved by Order E-20209, dated November 22, 1963; and CAB 5044-A97, dealing with temporary suspension and reinstatement of agents and exchange of delinquency information with IATA, not yet acted on by the Board.

^{22/} Nothing in such procedures shall be construed as prohibiting a separate combined remittance to a Canadian bank for offices located in Canada.

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6. That the resolution specified in the preceding paragraph shall contain, or there shall be filed concurrently with the Board, a schedule showing the order and projected date of implementation of the Plan in the remaining bank areas and the name of the bank(s) designated for each area, and thereafter, there shall be filed by the fifteenth day of each month a report showing, for the preceding

calendar month, the actual dates of implementation in additional bank areas, and any changes in the schedule;

7. That an agent operating ATC-authorized locations in more than one bank area making a combined report and remittance for such offices shall be permitted to enter the Plan at any time up until the date on which the Plan becomes effective in all bank areas in which the agent has offices;

8. That during the six-month initial implementation period, one of the ATC required validators shall be supplied to each agency office becoming subject to the Plan, upon the request of and at no cost to the agent;

9. That, not later than the end of the six-month initial implementation period, the carriers shall file a resolution with the Board under section 412 of the Act setting forth full details of the validator program now referred to in general terms in Paragraph 22 and Exhibit IV of Agreement CAB 16874;

10. That the approval herein shall not apply to that portion of Paragraph 15 of Agreement CAB 16874 which imposes a 7-day waiting period between the time when an agent satisfies or adjusts all amounts due any member of ATC and the time when he may be reissued ticket forms, exchange orders and airline identification plates;

11. That, not later than the end of the six-month initial implementation period, ATC shall file with the Board a statement showing results of the review of the Plan by the Interconference Area Settlement Plan Committee, referred to in Agreement CAB 16174-A1;

12. That, not later than the end of the six-month initial implementation period, the carriers shall file a resolution with the Board under section 412 of the Act modifying the bonding program in line with the reduction in the carriers' risk of loss provided by the Plan, or, in the alternative, a report describing fully the reasons for not enacting such resolution;

13. That data relating to implementation of the Plan, including but not necessarily limited to, instructions to agents, area banks and the carriers, be filed with the Board upon issuance;

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14. That, at least one month prior to the date scheduled for implementation of the Plan in the initial bank area, there be filed with the Board notice of such date; and

15. That the data required to be filed in ordering paragraphs 6, 11, 13 and 14 shall be filed in triplicate in this Docket with the Board's Docket Section.

This Order will be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Agreement Among the :
MEMBERS OF THE AIR TRAFFIC : Agreement CAB 16874 and
CONFERENCE OF AMERICA : 16874-A1
Proposing a standard agent's ticket : Docket 14191
and area settlement plan :

PETITION OF FUGAZY TRAVEL BUREAU, INC.
FOR RECONSIDERATION AND ORAL ARGUMENT

COMMUNICATIONS WITH RESPECT
TO THIS DOCUMENT MAY BE
SERVED UPON:

Mr. William Fugazy, President
Fugazy Travel Bureau, Inc.
488 Madison Avenue
New York 22, New York

Paul Reiber, Attorney
1815 H Street, N.W.
Washington, D.C. 20006

Dated: May 18, 1964

[Received May 18, 1964]

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PETITION OF FUGAZY TRAVEL BUREAU, INC.
FOR RECONSIDERATION AND ORAL ARGUMENT

The Board's order was an order of execution — economically speaking — of the Fugazy Travel Bureau, Inc.

This flows from the fact that Fugazy is operating a Travel Bureau which now reports sales on a monthly basis. By reporting monthly, Fugazy can extend thirty-day credit to its customers. In fact, Fugazy contends that more than 90% of its \$35,000,000 business in 1963 was

done on credit. Fugazy's business is based on the present authorization to report only once a month, which in turn is an "exemption" from what is now the normal requirement that agents report twice monthly.

The Board's order upsets the present arrangement because it would deprive Fugazy of its "exemption" — under which it has operated about six years — and impose the requirement of reporting three times monthly. This would make impossible the present method of doing its business — both because it could not extend credit and because it could not utilize the efficiencies of central reporting for its multi-location offices.

Is this economic execution "required by a serious transportation need, or in order to secure important public benefits"? This is the standard which the Board has set to measure such agreements.

"Where an agreement has among its significant aspects elements which are plainly repugnant to established anti-trust principles, approval should not be granted unless there is a clear showing that the agreement is required by a serious transportation need, or in order to secure important public benefits." Local Cartage Agreement Case, 15 C.A.B. 850, 852-3 (1952)

If there is any question whether there are "elements which are plainly repugnant to established anti-trust principles" in this agreement, it need only be stated that this is only one more effort by which the A.T.C. is seeking to keep Fugazy from serving certain

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customers. The A.T.C. tried to close certain offices of Fugazy — and lost by arbitration. It now has pending with the CAB a new agreement which will limit the customers Fugazy can serve. The proposal in this agreement to withdraw Fugazy's "exemption" is another tactic in the drive to destroy Fugazy.

Was proper evidence before the Board to support the findings?

Was that procedure followed, which, by the decisions and the

statutes, is required to precede so serious a conclusion?

We don't think so, and ask for reconsideration.

I. THE FACTUAL DISPUTES WERE RESOLVED AGAINST FUGAZY WITHOUT ADEQUATE OPPORTUNITY FOR REBUTTAL.

The Board concluded, on page 6 of the Order, that "there do not appear to be any significant disputes of fact which require resolution." But this simply overrides Fugazy's objections to the basic conclusions reached by the Order.

Whatever evidence the Board relies on to support its findings must be available for rebuttal. *Carter v. Kubler*, 320 U.S. 243

- A. Fugazy was given no charges and no opportunity to rebut the allegations that the differences between multi-location agents and others do not justify different treatment.

The clearest evidence that there are differences between multi-location agents and others is the fact that the airlines themselves asked for permission to treat them differently. That permission was granted by the Board in 1948. Since that time, substantial investments have been made in the business form which grew on the foundation of that differing treatment.

The Board brushed aside these differences at page 5 of its Order of August 23, 1963:

"... it is not apparent. . . that multiple-location agents should operate under procedures more liberal than those applicable to agents with single locations."

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We don't believe that fifteen years of history will disappear so obediently. The Board can rescind its 1948 approval of treating agents differently, but there was no evidence submitted by the ATC to justify wiping out the different treatment the ATC asked for back in 1948, and which they didn't disturb for fifteen years.

- B. There was no demonstration that only by requiring Fugazy to report three times monthly could funds be available to pay the costs of the new plan.

There were at least two alternatives to the proposed method of financing the new costs which were inadequately dealt with. One was the offer by a bank to perform the services without the changes in reporting and the other related to the use of the Airlines clearing house.

In the docket of this proceeding was a copy of a letter by one bank offering to perform the services in question without entailing the changes here proposed.

The Board recognizes on pages 6 and 7 that under the plan as proposed, the cash flow would be "somewhat in excess" and "over compensatory". But nowhere is there a discussion of the offer of "free services."

Furthermore, it remains uncertain as to why the clearing house couldn't handle the distribution of the agents' remittances. The unchallenged assertion of the ATC should not alone be dispositive of the issue.

The ex-parte nature of the proceeding on this point falls far below the required standards. The ATC was allowed to file comments after December 23, 1963, according to the Board's Order at page 11, although the closing date for comments was September of 1963. The ATC did not serve such comments on Fugazy, in fact, Fugazy was unaware of the ex parte filings until the issuance of the Board's order in April of 1964.

The basic dispute remains as to whether the showings made in this proceeding have met the clear standards expressed by the Board in the Local Cartage Agreement Case, *supra*.

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II. WHETHER THE BOARD'S ORDER CONSTITUTES A TAKING OF PROPERTY A REFUSAL TO PERMIT THE PURSUIT OF A LEGAL CALLING, OR THE REVOCATION OF A LICENSE, SUCH ACTION REQUIRES A TRIAL TYPE HEARING.

While it is recognized that there are not court decisions construing the precise rights which a travel agent has by virtue of the permissive

relationship which exists on the basis of Board approval of an ATC agreement, nevertheless, the Board's approval has been the basis of a business operation — which would be destroyed by the proposed Board action. The fact that Board action authorized the relationship cannot be ignored when the Board acts to destroy the relationship.¹ The Board's order is an interference with established rights which are protected by due process.

A. The rule in the Standard Air Line Case requires that the Board grant a hearing.

Fugazy's method of reporting on a thirty-day basis when most agents report twice monthly is very much like an "exemption" from a normal requirement. Once Fugazy has the "exemption" and invests substantial funds in a business thereby permitted, the "exemption" becomes a property protected by due process. The similarity to an "exemption" makes this situation very close to the facts in Standard Airlines v. C.A.B. 177 F.2d 18 (1949), where the court said, at pp. 20 and 21:

"So the problem before us concerns the statutory and constitutional rights of one who has a substantial property investment acquired in dependence upon a Government permit which is subject to immediate suspension at any time. What are the requirements of the statute and of due process of law in such a situation?

The controlling practicality, in our view, is that the suspension would destroy property, not a license property but investment and business property. The Government cannot make a business dependent upon a permit and make an otherwise unconstitutional requirement a condition to the

¹"...and although an individual's interest has been created by an ex parte decision it may not be destroyed without that character of notice and opportunity to be heard essential to due process of law." Joint anti Fascist Refugee v. McGrath, 341 U.S. 123, 166 (1951)

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permit. That principle applies to mail privileges. An administrative agency cannot make an otherwise invalid provision a condition to the grant of a permit. We think the same principles apply here.

We do not mean to say that for suspension purposes the Board need grant a full-scale hearing such as it might conduct in a revocation proceeding. The nature and extent of the hearing may be appropriate to the action being considered. The point is that in our jurisprudence an opportunity to present contentions orally, with whatever advantages that method of presentation has, is one of the rudiments of fair play required when property is being taken or destroyed. There is an assurance that contentions will be heard and understood upon a verbal statement, a degree of certainty not secured by the mere filing of written material."

This principle was followed in a case where the Board sought to reduce the scope of an exemption by regulation without a hearing. The court required a hearing, saying,

"... It would appear that plaintiffs have substantial investments, serious contractual commitments, and have developed valuable business and good will, all of which will be jeopardized unless the regulation is voided by the court. . ."

American Air Transport v. CAB, 98 F.Supp. 650 (1951)

And even where a hearing was not required, the court made clear that the Standard Air Line rule was sound. In Cook Cleland Airways, Inc. v. CAB, 195 F.2d 206 AD 1 2d 51, (1952), where a hearing was not required to suspend an exemption, the court said:

"We do not have here any question which might arise if the applicant had developed a business or acquired property by reason of the original registration or the original permissive regulations of the Board. cf. Standard Airlines v. CAB 177 F.2d 18 (1949)."

The Standard Air Line rule is clear in its requirement for a hearing and governs Fugazy's rights before the Board.

- B. Under the Administrative Procedure Act, Fugazy had a "license" and its revocation or refusal to continue requires a trial type hearing.

While counsel is unaware of a court decision which spells out precisely the nature of the "right" of a travel agent while he

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is suspended on the string of the Board's approval, the purpose and the language of the Administrative Procedure Act seems to cover the situation very clearly. That act requires that Fugazy be given a trial type hearing before the "permission" upon which it has operated may be withdrawn.

This conclusion is based upon the definition of the word "license" and upon the legislative intent that the revocation of licenses should be by the process called "adjudication" as distinguished from "rule making."

1. Fugazy's right to serve as agent and report only once in thirty days was a "license."

"License" in that Act was purposely defined so broadly as to include "any agency permit" or "approval" and to extend it even farther the definition of license includes "any agency permit. . . approval. . . or other agency permission." Sec. 2(e) of the Administrative Procedure Act defines "license" to include "the whole or part of any agency permit, certificate, approval, registration, character, membership, statutory exemption or other form of permission."

If there were a doubt as to the full reach of "license" it was dispelled by the explanations made by the sponsoring legislators. The chairman of the House subcommittee that reported the bill stated during debate that this definition was intended "to embrace every form of operation where a private party is required to take the initiative in securing the official permission of a governmental agency." 92 Cong. Rec. 5649 (1946) remarks of Rep. Walter, reprinted in S. Doc. No. 248, p. 356.

To the same effect is the explanation of the bill reprinted in the official Legislative History of the Act, Sen. Doc. No. 248, at p. 254.

"License" is defined to include any form of required official permission such as certificate, charter, etc. "Licensing" is defined to include agency process respecting the grant, renewal, modification, denial, revocation, etc. of a license. The definition of licensing supplements section 2(d). It is included because licenses take many forms. . ."

2. The refusal to continue or revocation of a license requires an adjudicatory order with a trial type hearing.

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Two basic forms of agency action are rules and orders.² And these divisions carry with them important differences in procedure. Orders evolve out of adjudicatory proceedings, whereas rule making proceedings are of a different nature.

Since the drafters of the Administrative Procedure Act emphasized that licenses were to be the subject of orders, the intention was that licenses were to be subject to the adjudicatory process rather than the rule making process. And under the adjudicatory process, a trial type hearing is necessary.

The emphasis of the drafters of the Act is set forth in the Committee Reports.

"'Order' means the final disposition of any matter, other than rule making but including licensing and whether or not affirmative, negative, injunctive or declaratory in form. 'Adjudication' means agency process for the formulation of an order.

The term 'order' is essentially and necessarily defined to exclude rules. 'Licensing' is specifically included to remove any question, since licenses involve a pronouncement of present rights of named parties, although they may also prescribe terms and conditions for future observance . . ." Sen. Doc. 248, p. 254.

The Administrative Procedure Act requires, therefore, that Fugazy be given a hearing of an adjudicatory nature before the continuation of his license is refused.

- C. The protection due an American citizen when he is to be deprived of pursuing a lawful calling is due Fugazy.

One of the most recent elaborations of the procedural rights of persons denied pursuit of a calling is the 1963 decision by the United States Supreme Court in Willner v. Committee on Character, etc., 373 U.S. 96 (1963). The court was dealing with the procedure followed when a person was prevented from practicing law. The

² Sen. Doc. No. 248, p. 14.

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decision is significant because it establishes the right to a hearing independent of a statute. The language of the court is set out at some length.

"We are not here concerned with grounds which justify denial of a license to practice law, but only with what procedural due process requires if the license is to be withheld. This is the problem which Chief Justice Taft adverted to in Goldsmith v. Board of Tax Appeals, 270 U.S. 117, involving an application of a certified public accountant to practice before the Board of Tax Appeals. Chief Justice Taft, writing for the Court, said,

'We think that the petitioner . . . should not have been rejected upon charges of his unfitness without giving him an opportunity by notice for hearing and answer. The rules adopted by the Board provide that "the Board may in its discretion deny admission, suspend or disbar any person." But this must be construed to mean the exercise of a discretion to be exercised after fair investigation, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process.'

We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of whose word deprives a person of his livelihood.

See Greene v. McElroy, 360 U.S. 474, 492, 496-7 . . . We think the need for confrontation is a necessary conclusion from the requirements of procedural due process in a situation such as this.

Petitioner was clearly entitled to notice of and a hearing on the grounds for his rejection either before the Committee or before the Appellate Division . . . There seems no question but that petitioner was apprised of the matters the Committee was considering.

'But a "full hearing" — a fair and open hearing — requires more than that . . . those who are brought into contest with Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be heard upon its proposals before it issues its final command.' Morgan v. U.S., 304 U.S. 1, 18-19.

Petitioner had not opportunity to ascertain and contest the bases of the Committee's reports to the Appellate Division, and the Appellate Division gave him no separate

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hearing. Yet 'the requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps.' If the Court of Appeals based its decision on the ground that denying petitioner the right of confrontation did not violate due process, we also hold that it erred for the reasons earlier stated . . .

We hold that the petitioner was denied procedural due process when he was denied admission to the Bar by the Appellate Division without a hearing on the charges filed against him either before the Committee or the Appellate Division." Willner v. Committee on Character, etc., 373 U.S. 96 (1963).

The decision of the Supreme Court which is recognized as the most far-reaching in this field is Greene v. McElroy, 360 U.S. 474 (1959). In that case, the Secretary of Defense revoked the security clearance of

Greene. Greene was an employee of a private corporation. Greene had no constitutional right to a security clearance and there was no statutory requirement that Greene have a hearing. But a hearing was held necessary. Again the language of the court is set out at length.

"This case involves the validity of the Government's revocation of security clearance granted to petitioner an aeronautical engineer employed by a private manufacturer which produced goods for the armed services . . . Petitioner was discharged from his employment solely as a consequence of the revocation because his access to classified information was required by the nature of his job . . .

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice or jealousy. We have formalized these protections

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in the requirements of confrontation and cross examination . . . This court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative and regulatory actions were under scrutiny . . . We deal here with substantial restraints on employment opportunities of numerous persons imposed in a manner which is in conflict with our long-accepted notions of fair procedures . . .

In the instant case, petitioner's work opportunities have been severely limited on the basis of a fact determina-

tion rendered after a hearing which failed to comport with our traditional ideas of fair procedure . . . We decide only that in the absence of explicit authorization from either the President or Congress the respondents were not empowered to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination."

The great engines of government when they are moving in that sacrosanct area of national security, must nevertheless pause long enough to protect the constitutional rights of a citizen. It seems hardly too much to ask that the A.T.C. also pause long enough for a hearing. It is moving in a private — not public — area. It is seeking private gain — not national security. It is employing the methods proscribed by the Anti-trust laws — itself a reason to require a hearing.

Conclusion

To find that Fugazy, as a business, must be extinguished, the Board should hold an adjudicatory hearing to permit full revelation of the facts.

Oral argument is respectfully requested.

/s/ Paul Reiber
Attorney for Fugazy Travel
Bureau, Inc.

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ANSWER TO FUGAZY PETITION FOR RECONSIDERATION

In what may well be as unabashed a plea for special privilege as was ever filed with the Civil Aeronautics Board, Fugazy Travel Bureau, Inc., seeks reconsideration of one single feature of the Standard Agent's Ticket Plan, as approved by Order No. E-20741, April 24, 1964.

Currently, 4201 of the 4205 Agents on the ATC Agency List are required to report and remit for sales at least twice a month. The other four -- one of whom is Fugazy -- can report and remit only once a month. Under the Standard Ticket Plan, as approved by the Board's Order of April 24th, all Agents would be required to report on the same three-times-a-month basis.

The Fugazy petition alleges that it would be a violation of Fugazy's property rights, the Federal Aviation Act, the Administrative Procedure Act, and the United States Constitution, among other things, for Fugazy thus to be placed on the same reporting basis as the other 4201 Agents. Before this can be done, according to Fugazy, a hearing must be held as a matter of law.

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The same fallacious legal argument -- including much the same line of citations and quotations -- was advanced by Fugazy in its earlier comments of November 20, 1962 and September 23, 1963, on the Standard Ticket Plan. They were effectively dealt with by the Board in its Order of April 24th. Since the petition for reconsideration thus adds nothing of significance that is new, the instant answer will not burden the Board with a re-hashing of legal argument. The Board's decision not to hold a hearing is legally and administratively sound -- particularly in view of the exhaustive consideration given the Plan by the Board and its staff, in the light of the extensive comments filed by Fugazy and other interested parties, during the 19 months the agreement establishing the Plan was pending before the Board.

There are, however, a few items of fact which it may be desirable to set straight.

First, there is no basis whatsoever for the canard that the Standard Ticket Plan is a "tactic...to destroy Fugazy" and "only

one more effort by which the A.T.C. is seeking to keep Fugazy from serving certain customers". Quite apart from the scurrilous nature of these allegations, it is an insult to the intelligence of the Board and its staff to suggest that the airlines spent countless man-hours developing the Standard Ticket Plan simply to hobble Fugazy -- and that the Board and its staff then spent countless man-hours analyzing the Plan, without discovering the masquerade.

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As the Board is well aware, the Standard Ticket Plan goes back many years -- to a time long before Fugazy began to report and remit only once a month under the "special remitting frequencies" provision of the ATC Agency Resolution (Section XI of Agreement CAB No. 5044). An earlier version of the Plan was approved in principle at the November 1956 meeting of the Air Traffic Conference, adopted at the April 1958 meeting of the Conference, and filed with the Board as Agreement CAB No. 11575. That particular version -- which would have, among other things, called for weekly reporting by Agents -- was not implemented because it contemplated an experimental test in conjunction with IATA, which did not materialize. Further study led to the instant Plan, Agreement CAB No. 16874, adopted and filed with the Board in September 1962.

By way of contrast, it was not until August 1959 that the tenth Fugazy branch was added to the ATC List -- making Fugazy eligible for the special reporting privilege -- and not until May 1962 that all of the domestic trunk lines authorized once-a-month reporting by Fugazy.

Another point to note is that Fugazy's basic argument is that he would have to alter his credit-extension practices if he had to report three times a month, instead of once a month. The Board has already

effectively disposed of this line of argument, in its Order of April 24th; here, again, the Fugazy petition advances nothing new, and nothing that requires repetition of what has been said before.

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It may be worthwhile to note, however, that both the history of the Plan, and the conditions upon which it has been approved by the Board, afford Fugazy a substantial period of time within which to make any necessary adjustments in his credit extension practices. Quite apart from the earlier history of the Plan, it was widely publicized in the trade press in the spring of 1962 that ATC adoption of the Plan was imminent, and, as previously noted, the instant agreement was filed with the Board in September 1962; Fugazy's counsel promptly advised the Board, by letter dated September 12, 1962, that Fugazy would file comments thereon. Fugazy has thus already had some two years' notice that adjustments might be required.

Moreover, it is abundantly clear that it will be close to a year, and more likely more than a year, before it becomes necessary for Fugazy to enter the Plan. The Plan contemplates a six-month initial implementation period in one bank area, followed by expansion to the remaining six bank areas at the rate of one or two each 30 to 60 days. Condition 7 of the Board's Order requires that a multiple-location Agent making a combined report be permitted to defer entry until "the Plan becomes effective in all bank areas in which the agent has offices". In view of Fugazy's nation-wide chain of branches, condition 7 means that Fugazy will not have to enter the Plan until at, or near, the completion of nation-wide implementation. Moreover, the necessary "lead time" for obtaining

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quantity production of validators, tickets and plates, perfecting details of procedures, conducting suitable education programs for Agents, and so forth, means that the initial six-month implementation period will not start before September or October of this year.

Consequently, whatever weight may be given to Fugazy's gloomy allegations of the impact on Fugazy of reporting under the Plan, it is clear that Fugazy has -- and, indeed, has already had -- abundant time to plan for transition from special privilege to reporting on the same basis as other Agents.

Finally, we note for the Board's consideration this fact: nowhere in the petition for reconsideration or the earlier Fugazy comments on the Standard Ticket Plan, is there any reference to the standard prescribed by Section 412 of the Act, namely, that the Board assess agreements between air carriers according to whether they are, or are not, "adverse to the public interest". There is much quotation from irrelevant cases involving "licenses" and "security clearances", much argument about the private interests of Fugazy, but nothing of substance about the public interest.

In our view, the Board has correctly assessed the Standard Ticket Plan as not "adverse to the public interest" and as, in fact, providing a genuine service to the public interest. In the Board's words

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"... we have concluded that, viewed broadly, the Plan represents a worthwhile forward step in the continuing development of conference procedures under which agent-carrier business affairs are conducted, and that it can be of significant practical benefit to individual agents and carriers alike." Order of April 24th, p. 14.

We respectfully urge that the Board adhere to these conclusions, and deny the Fugazy petition for reconsideration.

Respectfully submitted,

Braniff Airways, Inc.
Frontier Airlines, Inc.
Continental Air Lines, Inc.
Pacific Air Lines, Inc.
Western Air Lines, Inc.
New York Airways, Inc.
Trans World Airlines, Inc.
American Airlines, Inc.
Ozark Air Lines, Inc.
Northwest Airlines, Inc.
Mohawk Airlines, Inc.

Northeast Airlines, Inc.
Delta Air Lines, Inc.
Chicago Helicopter Airways, Inc.
Piedmont Aviation, Inc.
Lake Central Airlines, Inc.
Southern Airways, Inc.
United Airlines, Inc.
National Airlines, Inc.
Allegheny Airlines, Inc.
Eastern Air Lines, Inc.
Central Airlines, Inc.

/s/ Clif Stratton, Jr.

CLIFF STRATTON, JR.
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May 28, 1964

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Order No. E-21180

ORDER DENYING RECONSIDERATION AND ORAL ARGUMENT

By Order E-20741, adopted April 24, 1964, the Board approved an Air Traffic Conference (ATC) resolution establishing a "Standard Agent's Ticket and Area Settlement Plan" (Plan). On May 18, 1964, Fugazy Travel Bureau, Inc. (Fugazy) filed a petition for reconsideration and oral argument. Fugazy advances essentially the same con-

tentions it previously raised in its submissions of December 3, 1962, and September 23, 1963. The thrust of Fugazy's petition is that by requiring it to remit monies to the airlines three times a month rather than once a month, it will be precluded from furnishing credit to its customers and, therefore, its business will be destroyed.

Fugazy further asserts that it has a legal right to a hearing since, in effect, the present practice of monthly payments amounts to a Board granted license which cannot be abrogated without providing affected parties with due process of law -- an evidentiary hearing. Petitioner also contends that the resolution violates the antitrust laws in that it represents another attempt by the carriers to deny Fugazy access to certain types of customers. On May 27, 1964, twenty-two carrier members of ATC filed an answer in opposition to the petition.

We have considered the petition and answer thereto and conclude that Fugazy's request should be denied. Little need be said concerning petitioner's contention that it has a legal right to a trial type hearing. This contention was considered and denied in Order E-20741 and Fugazy has not advanced any new argument or other matters not previously considered by the Board which warrant a different conclusion.

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Fugazy disputes the public interest finding of Order E-20741 that, "viewed broadly, the Plan represents a worthwhile forward step in the continuing development of conference procedures under which agent-carrier business affairs are conducted, and that it can be of significant practical benefit to individual agents and carriers alike". We have found, inter alia, that the Plan should lead to a reduction in the number of sales reports required of travel agents, resulting in a saving of time and expense; that it would reduce the burden on both the agents and carriers by eliminating multiple-ticket stocks; and that it would improve the working of the delinquency and default provisions

of the Agency Resolution by lodging administration in the impartial operations of the area bank. We shall not extend this discussion by a repetition of the numerous additional factors to which we gave consideration in the earlier orders in arriving at our conclusion that the public interest standards of section 412 were met. Fugazy contends that the Plan must be rejected as to him because he, like other multiple branch travel agents, must remit under it on sales of the carriers' tickets on a ten-day rather than a thirty-day basis. As we pointed out in Order E-20741, the carriers "are not obligated to provide agents with a certain level of working capital in order to underwrite credit extensions or for other purposes. Regardless of the competitive climate, the provision of such funds is clearly a basic responsibility of the Agent". We have also noted that while Fugazy has reiterated that earlier reporting would "destroy" its business, the contention is speculative, and without supporting evidence that a business of Fugazy's magnitude could not command sufficient resources to support the extension of credit. Under the conditions we have imposed Fugazy will have ample time to prepare to enter the Plan. 1/ Moreover, the Board-imposed conditions should make easier the requisite change in operating practices resulting from the Plan's implementation. 2/

The only new contention raised in the petition relates to the September 20, 1963, letter of the American National Bank and Trust Company of Chicago stating that it could handle the mechanical aspects of the Plan without requiring a change in the current reporting or grace period procedures. 3/ Fugazy contends that the Board did not consider this offer of "free services". Undoubtedly the bank could handle the mechanics of the Plan. However, its letter is silent on its charges for such service; the crucial question since the acceleration in remittances is designated to provide funds to cover the Plan's costs. The letter does not provide a basis for not putting the Plan into effect.

1/ Condition 7 to the order provides that multiple branch agents in more than one bank area may enter the Plan at any time up until the date on which the Plan becomes effective in all bank areas in which the agent has offices.

- 2/ For example, the additional working day for submission of the report and remittance and the provision for agents operating 10 or more locations to submit an estimated report and remittance.
- 3/ The letter was addressed to the Air Transport Association of America, a copy of which was sent to the Board.

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ACCORDINGLY, IT IS ORDERED:

That the petition for reconsideration and oral argument be and it is hereby denied.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 18,946

September Term 1964

Fugazy Travel Bureau, Inc.

v.

Civil Aeronautics Board

Before: Wright, Circuit Judge,
in Chambers.

PREHEARING ORDER

Counsel for the parties in the above-entitled case having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

Dated: Nov. 16 1964

BRIEF FOR APPELLANT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 18946

FUGAZY TRAVEL BUREAU, INC.,

Petitioner

v.

CIVIL AERONAUTICS BOARD,

Respondent

ON PETITION FOR REVIEW OF AN ORDER
OF THE CIVIL AERONAUTICS BOARD

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 28 1965

Nathan J. Paulson
CLERK

Paul Reiber
1815 H St., N. W.
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Attorney for
Fugazy Travel
Bureau, Inc.,
Petitioner

January 28, 1965

STATEMENT OF QUESTIONS PRESENTED

I. Is a person who is adversely effected by an agreement (combination) among aircarriers entitled to an adjudicatory hearing before approval of the agreement by the Board? Is the right of such person to a hearing strengthened when the adversely effected interests are property and investment interests made possible by Board approval of a prior agreement so that the Boards action constitutes a revocation of existing rights?

II. Where an agreement has significant anti-competitive aspects can the Board approve the agreement without making findings as to such aspects and without finding that such restraints on competition are required by serious transport needs or in order to secure important transport benefits? If so, have the Board's orders met these requirements?

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18946

FUGAZY TRAVEL BUREAU, INC., Petitioner

v.

CIVIL AERONAUTICS BOARD, Respondent

ON PETITION TO REVIEW ORDER OF CIVIL AERONAUTICS BOARD

Brief of Petitioner

Jurisdictional Statement

The jurisdiction of this Court is invoked under Section 1006 of the Federal Aviation Act of 1958, 72 Stat. 795, 49 U.S.C.A. 1486, and Section 10 of the Administrative Procedure Act of 1946, 60 Stat. 243, 5 U.S.C. 1009

STATEMENT OF THE CASE

This case comes before this Court upon a petition for review of Order No. E-20741 issued by the Civil Aeronautics Board on April 24, 1964 in which the Board approved without a hearing a new agreement among the certificated airlines under Sec. 412 of the Federal Aviation Act of 1958.

The new agreement was adopted as a resolution entitled "Standard Agent's Ticket and Area Settlement Plan" (Plan)

by the members of the Air Traffic Conference of America, (hereinafter called ATC), which constitute practically all of the air carriers certificated by the Board to engage in domestic air transportation.

The Plan changes the existing procedure so that travel agents, instead of paying their remittances for tickets sold to each individual airline, will pay such sums to a bank designated for each geographic area. The bank will assemble the amounts due each of the receiving air carriers and credit their respective accounts. For this service, the banks will assess a service charge which is to be met by improving the cash flow to the banks for the carriers from the agents.

In order to create this improvement in the carriers' cash flow, the new plan requires the agents to remit three times monthly. For the large majority of agents this is a change from remitting each fifteen days to one each ten days.

For the Petitioner, the effect of the Plan is very serious. The Petitioner has 23 offices in 21 locations (Tr. 85). The air carriers have since 1948 recognized that agents of his size offered advantages to the carriers who in turn permitted them to remit only once a month. This different treatment was provided in an agreement among the carriers which at their request was approved

by the Board in 1948.

The adverse effect of the new Plan on the Petitioner is that in reliance on the 1948 agreement and its approval by the Board, it developed a business with 23 offices doing an annual business of \$35,000,000 (Tr. 163). More than 90 per cent of the volume of this business is done on thirty-day credit, which is possible because the Petitioner needs remit only once each thirty days.

To continue its business, it is necessary for the Petitioner "to gather into one central office the proposed remittances of twenty other offices, audit, verify, correct and consolidate these into a single remittance..."

To move to the new Plan, "Fugazy would have to (a) discard a central accounting system recently put into effect at a cost of \$80,000; (b) employ from one to three auditors at each location to prepare reports directly to the airlines (from each office); (c) give up central control of remittances and refunds which are essential to provide responsible accounting to the airlines and to Fugazy's customers." (Tr. 66)

The justification for the Board's reversal of its 1948 approval - an approval of 15 years' standing - was that..."...it is not apparent to the Board that multiple-location agents should operate under procedures more liberal than those applicable to agents with single

locations." (Order No. E-19945, Aug. 23, 1963 p. 5 Tr. 124)

In answer to the Petitioner's contention that its method of doing business rested on the 1948 approval of the ATC agreement and could exist only with such approval, the Board said in a footnote:

"Fugazy's contention that the Board is passing on his 'property' rights without granting a hearing misconceives the nature of the Board's action in the ATC Resolution Investigation, Docket 8300 (29 CAB 258, 1959) and in other related proceedings which approved joint carrier agreements affecting travel agents. The Board, under the authority of section 412, passed upon joint carrier agreements to insure compliance with the Act. The Board did not license travel agents or otherwise confer on them any authority or property rights." (Order No. E-20741, April 24, 1964, p. 6, footnote 7.)

Although the stated purpose for requiring a remittance every ten days was to improve carriers cash flow to the collecting banks to offset the charges by such banks for the services to be performed by them, (Tr. 124, 252), the Board recognized that the gain to the carriers was more than necessary. It pointed out that "...the gain to the carriers from the projected improvement in cash flow would be somewhat in excess of the estimated cost of the area banks' service charges to be paid by them" (Order No. E-20741, April 24, 1964).

In the Board's Order approving the Agreement, it made no reference to the statement filed by one bank that it

would perform the services without changes in the existing reporting procedure (Tr. 151). There is no evidence that the Bank was invited to supply details of its proposal which presumably would have lessened the need for changing collecting periods.

The Petitioner requested a hearing to controvert the allegations of the air carriers and cross examine witnesses. This was denied. The Petitioner's request for oral argument was likewise denied. (Order No. E-21180, August 12, 1964.)

None of the evidence on which the Board based its Order is under oath. The Board accepted ex parte and without cross examination the assertions of the ATC that other alternatives to the proposed plan were unacceptable. (Order No. E-20741, p. 11). These comments of the ATC were never served on Petitioner and no opportunity was given for rebuttal. (Tr. 240-4)

This proceeding from its initiation has clearly been one which has particular effect on the Petitioner and constituted an adjudication of a right personal to it. The number of travel agents which had 10 or more offices has not exceeded 4 during the fifteen year period between 1948-1963. When the special provisions were adopted by the airlines and approved in 1948, there were 3 agents to which it applied, and at the time the new agreement

was filed with the Board in September, 1962, there may have been only one other agent which was using the thirty day remittance privilege. From the beginning of this proceeding, therefore, any action taken as to the right to remit each 30 days was personal to the Petitioner, as was pointed out to the Board in the first comments filed in November, 1962.

While the Board was considering this agreement in this case it issued its decision in the Passenger Credit Plans Investigation, Order No. E-19197, Jan. 16, 1963. In that decision it approved a number of credit plans under which the airlines may extend 30 days free credit to their customers. It also approved arrangements between the airlines and certain credit card companies under which the credit card companies assume the payment of air transportation purchased by their cardholders and need not pay the airlines for thirty days. The Credit Plans case, therefore authorizes the airlines to sell passenger tickets on 30 day credit. It also authorizes the credit card companies to finance the purchase of air transportation by their cardholders and not to pay the airlines for thirty days. By contrast the subject order revokes the Petitioner's existing right to pay the airlines for its sales on a thirty day basis and renders Petitioner unable to compete with the airlines

and the credit card companies in the sale of air transportation on credit.

STATUTES INVOLVED

The provisions of the Federal Aviation Act of 1958 and other statutes - principally involved are set forth in the Appendix, infra p. . Other statutory provisions are cited at the appropriate places in the text. Particularly involved are Section 412 dealing with filing and approval of agreements and Section 1005 (f) regarding the necessity of findings of fact in orders issued by the Civil Aeronautics Board.

SUMMARY OF ARGUMENT

I.

Where Petitioner has developed a business and investment property under the authority of an agreement approved by the CAB and in effect since 1948, that business and investment property cannot be taken away by revocation of such authority without a hearing.

Although Sec. 412 of the Federal Aviation Act of 1958 under which the agreement was approved does not provide for a hearing, a hearing is required by due process and Sec. 5 of the Administration Procedure Act.

The requirement of a hearing is supported by the interpretation of comparable provisions of the Shipping

Act of 1916 by this and other courts; by the protection afforded third persons from arbitrary action taken by trade and non-governmental regulatory associations; and by the protection afforded persons who are denied the right to pursue a lawful calling.

II.

The Board's approval of the agreement immunized, under the power granted to it by Sec. 414 of the Federal Aviation Act, conduct otherwise in violation of the anti-trust laws. The agreement was in restraint of trade since it revoked existing arrangements which were the basis of Petitioner's ability to compete with the airlines and the general purpose credit card companies in the sale of air transportation on credit. Before the Board can approve such an agreement it must carefully examine the anti-trust issues involved and specifically find that such otherwise proscribed conduct is necessary in the public interest. The Board in this case did not analyze the anti-trust significance of its action, nor did it make the requisite findings.

ARGUMENT

I. THE NATURE OF THE PETITIONER'S RIGHTS AND THE BOARD'S ACTION REVERSING A PRIOR APPROVAL REQUIRE THE ACTION

TO BE TAKEN ONLY AFTER AN ADJUDICATORY HEARING.

- A. The petitioner has acquired business and investment property in the authorization previously granted, which requires the Board to conduct an adjudicatory hearing before those rights can be taken away.

The Petitioner, Fugazy Travel Bureau, has developed a business property of substantial investments, serious contractual commitments and valuable good will pursuant to a specific permission and approval granted by the Board in 1948, all of which will now be jeopardized by the withdrawal of the past approval. Agency action of this nature can be taken only after a hearing which is required by more than the statute.

Although Section 412 of the Federal Aviation Act of 1958 does not state that a hearing is required, a hearing is required by due process. The section of the statute under which the action was taken, Sec. 412 of the Federal Aviation Act of 1958, 72 Stat. 770, 49 U.S.C. 1382, does not use the term "hearing." The applicable language reads:

"(b) The Board shall be order disapprove any such contract or agreement, whether or not previously approved by it, that it

finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest or in violation of this Act..."

The Supreme Court has held that the hearing requirement is so basic that it is mandatory even though not specifically called for by the regulatory statute. This is so even though Section 5 of the Administrative Procedure Act, 60 Stat. 239, 5 U.S.C. 1004, which regulates hearing procedure, applies that section only to hearings "required by statute." Wong Yang Sung v. McGrath, 339 U.S. 33 (1950).

The significance of the Wong case was summarized by a leading authority on administrative laws as follows:

"That the Court meant what it said in the Wong case is shown by the Riss Case of the following year. The ICC denied a certificate of convenience and necessity to a motor carrier, without complying with § 5 of the APA. The district court held that the statute authorizing certificates did not require a hearing. Much to the consternation of the ICC Bar the Supreme Court reversed per curiam ²⁵ with a mere citation of the Wong case. When the Seventh Circuit held that Sec. 5 did not apply to a fraud order proceeding in the Post Office Department ²⁶

25 Riss & Co. v. U.S. 341 U.S. 907 (1951)

26 Cates v. Haderlein, 189 F 2d 369 (1951)

the Solicitor General confessed error and the Supreme Court reversed per curiam.²⁷ Another court has later applied Sec. 5 to a Post Office order stopping delivery of mail on grounds of obscenity.²⁸

2 Davis, Administrative Law Treatise, Sec. 1308, p. 229 (1958)

Independent of and in the same year as the Supreme Court's decision in the Wong case, supra, this court required hearings to be held by the Board where its action would destroy "investment and business property."

In Standard Air Lines v. CAB, 85 U.S. App. D.C. 29, 177 F 2d 18 (1949), the issue was whether an exemption could be suspended without a hearing. Here, too, there is no provision in Sec. 416 (b) that a hearing be granted. Nevertheless, it was held that a hearing was required because the suspension would destroy property. The court said, at p. 20:

"The controlling practicality, in our view, (as to whether there should be a hearing) is that the suspension would destroy property, not a license property but investment and business property. The Government cannot make a business dependent upon a permit and make an otherwise unconstitutional requirement a condition to the permit."

27 Cates v. Haderlein, 342 U.S. 804 (1951)

28 Door v. Donaldson, 90 U.S. App. D.C. 188, 19 S F2d 764 (1952)

And in Cook Cleland Airways, Inc. v. CAB, 90 U.S. App. D.C. 220 195 F 2d 206 (1952), where a hearing was not required to suspend an exemption, the court said:

"We do not have here any question which might arise if the applicant had developed a business or acquired property by reason of the original registration or the original permissive regulations of the Board. cf. Standard Airlines v. CAB 177 F 2d 18 (1949)"

In American Air Transport, Inc. et al v. CAB 98 F Supp 650 (1951) the Board sought to reduce the scope of an exemption (termed a "license" by the court) by an amendment of a regulation without a hearing. The court required a hearing, saying,

"...it would appear that plaintiffs have substantial investments, serious contractual commitments, and have developed valuable business and good will, all of which will be jeopardized unless the regulation is voided by the court..."

B. The Function of the Board in a controversial agreement filed under Sec. 412 is adjudicatory, and requires an adjudicatory hearing.

The requirement for an adjudicatory hearing is supported in this instance by the nature of the Board's function. The Board here is required to issue an order which applies the law to a set of facts and a proposed agreement. Section 412 (b) provides:

"The Board shall by order approve any such contract or agreement, or any modification or cancellation thereof..."

With reference to the issuance of orders, the Board is directed

"Every order of the...Board shall set forth the findings of fact on which it is based..."
72 Stat. 794, 49 U.S.C.A. 1485 (f)

The function of the Board is "adjudicatory" in that it is called upon to apply the tests of the statute to a given agreement as it applies to known individuals and existing, not prospective, facts. Is this agreement "adverse to the public interest or in violation of this Act"?

Furthermore, the Board must consider that the beneficiaries of the Order will be relieved from the Anti-Trust laws, pursuant to Sec. 414 of the Act. Such approvals have grave consequences to the continuation of your Petitioner's business. Such infringement of economic rights should be accomplished only upon compliance with procedural safeguard of hearing and decision on the record. An order finding that the agreement does not violate the Act is of a type which should not be made over the objection of parties without the safeguard of a hearing.

The need for an adjudicatory process in this matter

is supported by the Administrative Procedure Act of 1946, which classified agency actions as "rule making" and matters "other than rule making." The latter were classified as adjudicatory. Admin. Proc. Act., Leg. Hist. 79th Cong. 2d Sess., Document No. 248, pp. 14, 356. Adjudication was defined as the process for the formulation of an order.

Thus Sec. 2 (d) defines "Order and Adjudication" Procedure Act, Sec. 2 (d)

"... 'adjudication' means agency process for the formulation of an order other than rule making but including licensing."

By directing that action under Sec. 412 (b) should be by order, the Congress contemplated that adjudicatory process would be followed.

The functional test of whether adjudicatory process applies is whether the action resembles what is done by a court or by the legislature.

"When an administrative agency makes law as a legislature would, it must follow rule-making procedure prescribed in Sec. 1003 and when it makes law as a court would, it must follow adjudicatory proceedings under 1006 and 1008." N.L.R.B. v. A.P.W. Products Co., 316 F. 2d. 899, 905, (1963)

This analysis is supported by Davis, supra, Sec. 15.03, p. 353 (1958).

"When a court or an agency finds facts concerning the immediate parties - who did what, where, when, how, and with what motive or intent - the court or agency is performing an adjudicative function, and the facts are conveniently called adjudicative facts. When a court or an agency develops law or policy, it is acting legislatively..."

- C Judicial interpretation of almost identical provisions of the Shipping Act of 1916, which served as a predecessor for Sections 412 and 414 of the Federal Aviation Act support the conclusion that a hearing is required, particularly when third persons are affected adversely.

Similar statutory provisions have been interpreted by this court and the Circuit Court of the Ninth Circuit to require an adjudicatory hearing in cases like this.

The similar statute is Section 15 of the Shipping Act of 1916, 39 Stat. 733, 46 U.S.C. 814, which authorizes operators of vessels to enter agreements, which if approved by the now Federal Maritime Commission immunizes the carriers from the anti-trust laws. The Act was first adopted in 1916 and served as a guide for the later Federal Aviation Act of 1958 (formerly the Civil Aeronautics Act of 1938) when it was adopted.

The pertinent language of Sec. 15 of the 1916 Act is:

"...The board may be order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be

discriminatory or unfair as between carriers...or to operate to the detriment of the commerce of the United States, or in violation of this Act, and shall approve all other agreements, modifications, or cancellations."

Under those provisions an agreement was filed and objecting comments were filed by the Isbrandtsen Co., a company not party to the agreement. Without granting a hearing as requested and on the basis of comments filed, the then Federal Maritime Board approved the agreement. On petition to this Court, the Board was ordered to grant a hearing. Isbrandtsen Co. v. U.S. 211 F 2d 51 (D.C. Cir.) cert. den. 347 U.S. 990 (1954) Pursuant to that decision, the Board did have a hearing before an examiner on the agreement. In the Matter of the Statement of the Japan-Atlantic and Gulf Freight Conference Filed under General Order 76 4 F.M.B. 706 (1955)

The holding of this court in the 1954 case that a hearing was required was regarded as so basic by the legislators that when the statute was amended in 1961, Sen. Kefauver proposed the addition of the words, "and hearing" to insure that the new statute would not be interpreted to overrule the decision of this court in

the Isbrandtsen case. The discussion on the floor by the legislative leaders to this effect was:

"MR. KEFAUVER. Mr. President, I call up my amendment designated "6-1-61-0," and ask that it be stated.

THE LEGISLATIVE CLERK. On page 14, line 11, after "notice" it is proposed to insert "and hearing".

...

MR. ENGLE. [Floor Manager of the Bill] We believe the Administrative Procedure Act would have required a hearing in any contested matter. However, the amendment offered by the distinguished Senator from Tennessee makes the hearing mandatory, and to that extent clarifies the bill. We have no objection to the amendment.

MR. KEFAUVER. Mr. President, I ask unanimous consent to have printed at this point in the Record a short further explanation of the amendment, with references to certain cases in the Supreme Court of the United States.

There being no objection, the explanation was ordered to be printed in the Record, as follows:

Explanation

The purpose of this amendment is to assure that the rule of the Isbrandtsen decision of the circuit court in 1954 is not in some way overruled by the new law. According to the Senate Committee report on the bill: "In Isbrandtsen Co. v. United States (211 F. 2d 51 (D.C. Cir.) cert. denied 347 U.S. 990 (1954)), the U.S. Court of Appeals for the District of Columbia Circuit held the Board's action improper on the grounds that before such an agreement may become effective under such circumstances the Board must hold a hearing and give its formal approval" (S. Rept. No. 860, 87th Cong., 1st sess. at 8-9 (1961))."

Index to the Legislative History of the Steamship Conference/Dual Rate Law, P.L. 87-346, Sen. Doc. No. 100, pp. 272-3.

The conclusion that a hearing is necessary is also supported by the recent decision in the 9th circuit in Anglo-Canadian Shipping Co., Ltd. v. Fed. Mar. Com'n, 310 F 2d 606 (1962) dealing with a parallel problem. In that case the court had before it a Federal Maritime Commission order disapproving a resolution adopted by a steamship conference filed for approval under Sec. 15 of the Shipping Act of 1916. 39 Stat. 733, 46 U.S.C. 814. The resolution was adopted and filed by a conference basically similar to the Air Traffic Conference involved in the present case. Similarly, the resolution dealt with how members of the conference were to deal with third persons, not members thereof. In the FMC case, the third persons were freight forwarders, and the resolution limited the commissions to be paid. Here the third persons are travel agents and the resolution regulates remittance periods.

The court decided the case basically on the issue of whether a hearing was required, citing this court's decision in the Isbrandtsen case, supra. The court, after hearing argument, pursued the hearing issue so far as to request supplemental briefs as to whether the agency action was "rule making" or "adjudication," the

Agency having considered the agreement along with other matters. But all parties agreed that the action was adjudicatory, which led the court to hold that a hearing was required. The Court said, at p. 615

"The provisions of Sec. 8 (A.P.A.) are by its terms made applicable 'in cases in which a hearing is required to be conducted in conformity with sec. 7 of this title.' This is such a case. (ftnote. After this case had been first argued before us, we called for additional briefs from the parties upon certain questions propounded by us for answer including the question whether the proceeding before the Commission was instituted as a proceeding for rule making as contemplated by Sec. 4 of the A.P.A., rather than a proceeding for adjudication as contemplated by sec. 5 of the same Act. Supplemental briefs were filed in which all parties unanimously agreed that this was a proceeding for adjudication.)"

Although Section 15 as now amended requires notice and hearing, the addition of the word hearing in 1961 does not lessen the precedent of the Anglo-Canadian Case, supra.

The agreement by the Steamship Conference had been filed under Section 15 of the Act prior to its amendment calling for hearings. The Section was amended while the proceeding was in progress, and the legislators explained the addition of the word "hearing" only as precautionary to leave no doubt that the ruling of this court in the Isbrandtsen case, supra, requiring a hearing was not

overruled, see the discussion above.

That case is particularly strong precedent because the proceeding in which the attacked order was issued was instituted by the Commission itself. This circumstance would permit a contention that the proceeding was commenced to prepare a rule - therefore it need only meet rule-making requirements and not hearing requirements. But in spite of the color of "rule-making" the court held that the nature of the controversy and the nature of the findings called for an adjudicatory hearing.

D Administrative Interpretation of comparable Sec. 15 of the Shipping Act of 1916, also supports the requirement for a hearing.

The question of whether and when hearings should be granted prior to action under Sec. 15 of the Shipping Act was examined by the Anti-Trust Subcommittee of the Committee on the Judiciary, House of Representatives, and reported in "Monopoly Problems in Regulated Industries, Part I Vol. I Ocean-Freight Industries" 86th Cong. 1st Sess. (1959). In those hearings, the Subcommittee had before it a memorandum prepared by the Ass't. General Counsel of the Federal Maritime Board which concludes that hearings are required

when agreements affect third persons adversely. At pp.

61-5 of those hearings, the following excerpts appear.

"(b) Protestants against a section 15 approval are entitled to be heard.

"When we turn to the question whether a hearing is required on a protest to a section 15 approval, the applicable case law is considerably more definite than that discussed in the preceding section. While there could be some variation in the procedural standards depending on the kind of agreement under consideration, it seems clear that a proposal to introduce a contract/non-contract system of rates must be set for hearing where an affected person requests such hearing. The approval of contract/non-contract rates 'attaches grave consequences to contractual and other business relations of [non-conference competitors].'
Isbrandtsen v. United States, 211 F. 2d 51, (1954). The limitation of a shipper's freedom to choose among carriers, and the competitive impact upon the independent carriers, are sufficient grounds for the requirement that a hearing must be afforded to such shippers or such carriers. The infringement of an economic right can properly be accomplished only upon compliance with the procedural safeguard of hearing and decision on the record. Section 15 approval must be based upon a finding that the agreement will not be 'unjustly discriminatory or unfair,' will not 'operate to the detriment of the commerce of the United States', and that it does not violate any provision of the Shipping Act, 1916. Such findings are of the type which, by repeated judicial pronouncement, cannot be made over the objection of parties without the safeguard of hearing.
Florida v. United States, 262 U.S. 194, 215 (1930); Morgan v. United States, 298 U.S. 468, 479-80 (1936); United States v. Carolina

Carriers Corp. 315 U. S. 475, 488-9 (1942); Eastern-Central Ass'n v. United States, 321 U. S., 194, 209 (1944); Standard Airlines v. C. A. B., 177 F. 2d 18 (1949); Walker v. Popeno, 149 F. 2d 511 (1945). Indeed, the award of a certificate of public convenience and necessity to a motor carrier (much less an exemption from anti-trust law) cannot lawfully be accomplished without affording affected parties an opportunity to be heard. American Trucking Assn's v. United States, 326 U. S. 77 (1945); Riss & Co. v. United States, 341 U. S. 907 (1951).

"It would therefore seem that a hearing is necessary before the Board may approve an agreement which will affect the economic freedom of an interested party. Where such a hearing is necessary, based, as it is in my opinion, upon the Constitutional requirement of due process, such a hearing must be 'a fair one, one before a tribunal which meets at least currently prevailing standards of impartiality.' Wong Yang Sung v. McGrath, 399 U. S. 33, 50, 51, (1950). It is hardly to be doubted that the currently prevailing standard of fairness is that established by section 5 of the APA. See Wong Yang Sung v. McGrath, 399 U.S. 33 (1950).

"In conclusion, I am of the opinion that:

(1) so long as it does not do so capriciously or arbitrarily, but on reasonable grounds, the Board may deny an application for section 15 approval without affording an oral evidentiary hearing to the proponents; (2) on the other hand, the Board may not approve an agreement over the objection of an affected party without affording such party the procedural safeguards established by section 5, APA.

....

"The C.A.B. has not observed with regularity the practice of affording either applicants or protestants a hearing in connection with approvals

under Section 412. In cases where the proposed approval would seriously affect the position of third parties, the C.A.B. has afforded an opportunity for hearing to such persons. However, it is not uncommon for the C.A.B. to approve the proffered agreements even in the face of third party protests, without affording an opportunity to be heard. In my opinion, a reviewing court would almost surely upset such an approval, assuming that the protestant has legal standing to protest."

/Footnotes omitted/

A requirement of hearing is supported by Silver v. New York Stock Exchange, 373 U.S. 341 (1963) in which the court held that a stock exchange although authorized by statute to take joint action and given an exemption from the Anti-trust laws comparable to the immunity given the airlines by the Federal Aviation Act, must nevertheless give hearings to persons about to be denied valuable rights. The court indicated that even if the S.E.C. has prescribed rules for the Exchange, the rules would "have to provide as a minimum the procedural safeguards..." p. 364

By requiring C.A.B. approval of the anti-trust combinations of the airlines, the Congress must have intended to give at least as much protection to third persons as the protection afforded to third persons in the Securities Exchange Act.

E. Petitioner's property interests were analagous to a "license" and to a right to engage in a lawful calling of which it could not be deprived without a hearing.

The principles applicable to and the protection afforded persons holding a license also support the requirement that Petitioner should be granted a hearing before the privileges he has are taken from him by government action.

The concept of licenses in the Administrative Procedure Act was broad enough to include what Petitioner has. License in that act was intended to reach and include "every form of operation where a private party is required to take the initiative in securing the official permission of a government agency." (Remarks of Rep. Walter, 92 Cong. Rec. 5949 (1946), reprinted in A.P.A. Leg. Hist., 79th Cong. Doc. No. 248, p. 356.)

The definition is broad enough to achieve that goal. Thus Sec. 2 (e) defines license to include "any...agency permission."

The Petitioner is also entitled to an adjudicatory hearing under the protections afforded to persons who are deprived

of pursuing a lawful calling.

One of the most recent elaborations of the procedural rights of persons denied pursuit of a calling is the 1963 decision by the United States Supreme Court in Willner v. Committee on Character, etc. 373 U.S. 96 (1963). The court was dealing with the procedure followed when a person was prevented from practicing law. The decision is significant because it establishes the right to a hearing independent of a statute. The language of the court is set out at some length.

"We are not here concerned with grounds which justify denial of a license to practice law, but only with what procedural due process requires if the license is to be withheld. This is the problem which Chief Justice Taft adverted to in Goldsmith v. Board of Tax Appeals, 270 U.S. 117, involving an application of a certified public accountant to practice before the Board of Tax Appeals. Chief Justice Taft, writing for the Court, said,

'We think that the petitioner... should not have been rejected upon charges of his unfitness without giving him an opportunity by notice for hearing and answer. The rules adopted by the Board provide that "the Board may in its discretion deny admission, suspend or disbar any person.: But this must be construed to mean the exercise of a discretion to be exercised after fair investigation, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process.' Id., p. 123

The decision of the Supreme Court which is recognized as the most far-reaching in this field is Greene v. McElroy, 360 U.S. 474 (1959). In that case, the Secretary of Defense revoked the security clearance of Greene. Greene was an employee of a private corporation. Greene had no constitutional right to a security clearance and there was no statutory requirement that Greene have a hearing. But a hearing was held necessary.

"This case involves the validity of the Government's revocation of security clearance granted to petitioner an aeronautical engineer employed by a private manufacturer which produced goods for the armed services... Petitioner was discharged from his employment solely as a consequence of the revocation because his access to classified information was required by the nature of his job (475)... Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue... We have formalized these protections in the requirements of confrontation and cross examination... This court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases,... but also in all types of cases where administrative and regulatory actions were under scrutiny (496-7)... We deal here with substantial restraints on employment opportunities of numerous persons imposed in a manner which is in conflict with our long-accepted notions of fair procedures (506-7)...

F. Since the Board was reversing one of its orders effective for fifteen years, the Board should have reviewed the facts peculiar to the practices under its earlier approval and made findings on such analysis.

The question of whether travel agents with ten or more offices conducted their business in a manner sufficiently different from others and made contributions to air travel to justify different remittance periods was not a new question. The Board had considered it in 1948 and found different treatment to be in the public interest. And after the approval in 1948 there were no complaints to the Board - at least none were referred to in its recent action. During the fifteen years the practice was in effect experience had been had both by the carriers and by the agents.

Therefore, this was not an area in which judgment must be based on discretion or policy because there were facts and experience susceptible of proof. These data should have been gathered at a hearing, analyzed and the statute applied to permit this court to review the Board's action. In the Anglo-Canadian case, supra, the court said, at p. 613:

"We recognize that there is some authority holding that findings may be based upon judgment or discretion or policy where the specific facts to support the judgment are not susceptible of proof. But we cannot say that this is that type of case. Rule 21 has been in effect and operation for a good many years. There must be an abundance of available evidence to disclose just how much brokerage has been actually paid under the operation of this Rule... The record is wholly wanting in any information that might answer these questions but we think we can take judicial notice

that evidence on this subject is obtainable, available and can be procured. As the Supreme Court has said in matter calling for administrative determinations similar to this one: There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. Morgan v. U.S. 298 U.S. 468, 480."

II. THE BOARD FAILED TO CONSIDER AND TO MAKE FINDINGS WITH RESPECT TO THE ANTI-TRUST IMPLICATIONS OF THE PROPOSED AREA SETTLEMENT PLAN IN DETERMINING WHETHER THE PLAN MET THE "PUBLIC INTEREST" REQUIREMENTS OF SECTION 412 (b) OF THE FEDERAL AVIATION ACT OF 1958

A. The law is clear that the Board has a statutory obligation carefully to consider the anti-competitive aspects of an agreement submitted for its approval under Section 412 (b), to set forth in its order the facts relating to such aspects, and to find that despite such aspects, the agreement is required by a serious transportation need.

In approving or disapproving agreements submitted under the provisions of Section 412 of the Federal Aviation Act of 1958, 49 U.S.C. 1382, the C.A.B. is required to examine the proposed agreement in the light of policies embodied in the federal anti-trust statutes, McLean Trucking Co. v. United States, 321 U.S. 67 (1944). In the McLean case the Supreme Court held that the Interstate Commerce Commission, which has authority similar to that of the C.A.B. to exempt certain surface carrier conduct from the operation of the anti-trust laws, was bound to consider the anti-trust implications of a proposed

solidation of seven motor carries in approving the consolidation. The court stated:

"Congress however neither has made the anti-trust laws wholly inapplicable to the transportation industry nor has authorized the Commission in passing on a proposed merger to ignore their policy."

321 U.S. at 86.

This court applied the rule of the McLean case in the case of Isbrandtsen Co. v. United States 211 F. 2d 51 (D.C. Cir. 195), cert. denied 347 U.S. 990 (1954). In that case this court had under consideration the authority of the Federal Maritime Board to exempt certain agreements among vessel operators from the application of the anti-trust laws. In referring to the exercise of such authority by the FMB, this court said at p. 57:

"The condition upon which such authority is granted is that the agency entrusted with the duty to protect the public interest scrutinize the agreement to make sure that the conduct thus legalized does not invade the prohibitions of the anti-trust laws any more than is necessary to serve the purposes of the regulatory statute...."

The McLean case, supra, has frequently been cited by the C.A.B. in its decisions passing upon agreements submitted under Section 412 as requiring the Board to consider the proposed agreements in the light of anti-trust

principles. See Air Cargo Inc., Agreement, Petitions, 9 C.A.B. 468, 470 (1948); Air Freight Tariff Agreement Case, 14 C.A.B. 424, 425 (1951); IATA Agency Resolutions, 12 C.A.B. 493, 499-500 (1951). The most significant CAB decision in this regard is that in the Local Cartage Case, 15 C.A.B. 850 (1952). In that case, the Board stated:

"[T]he Board, in determining whether an agreement is adverse to the public interest under section 412 of the Act, cannot ignore the question of whether such an agreement may run counter to the principles and purposes of the anti-trust laws. The approval of an agreement under section 412 exempts the agreement from the operation of the anti-trust laws by virtue of section 414. While this exemption demonstrates the Board's power to approve agreements which otherwise would violate the anti-trust laws, it also imposes upon the Board, in determining the effect on the public interest of agreements for which approval is sought, the duty to evaluate such agreement in the light of anti-trust policy and principles. Where an agreement has among its significant aspects elements which are plainly repugnant to established anti-trust principles, approval should not be granted unless there is a clear showing that the agreement is required by a serious transportation need, or in order to secure important public benefits."

15 C.A.B. at 852

This view of the Board as the anti-trust monitor of the airlines industry is supported by Section 102 (c) of the Act, 49 U.S.C. 1302 (c), which directs the Board to

consider as being in the public interest:

"The promotion of adequate, economical and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices."

It is also reinforced by Section 411 of the Act, 49 U.S.C. 1381, which authorizes the Board to:

"...investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof."

This section gives to the Board "Federal Trade Commission" authority in the airline industry. American Airlines v. North American Airlines 351 U.S. 79, 82 (1956) (case decided under the Civil Aeronautics Act of 1938, which contained the same language).

The responsibilities of the Board in the anti-trust field are the more important since under the statute the Board has jurisdiction which is exclusive of the courts with regard to many practices alleged to violate the anti-trust laws. See Apgar Travel Agency, Inc. v. International Air Trans. Ass'n., 107 F. Supp. 706 (S.D.N.Y. 1952), where the court held that a travel agent who alleged a conspiracy

by the airlines to drive him out of business must present his case to the CAB. See also Pan American Airways Inc. v. United States, 371 U.S. 296 (1963), where the Supreme Court held that the courts had no jurisdiction of a civil anti-trust action brought by the government alleging a conspiracy to monopolize air commerce by the defendants, even though in that case the suit had been instituted by the Justice Department at the request of the CAB and the CAB had filed a brief as amicus curiae in support of the government's position.

Section 414 of the Act, 49 U.S.C. 1384, provides:

"Any person affected by any order made under sections 1378, (§408) 1379, (§409) or 1382 (§412) of this title shall be, and is hereby, relieved from the operations of the 'anti-trust laws', as designated in section 12 of Title 15, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order." (Parallel citations to sections of the Act added.)

Section 414 emphasizes the importance of the Board's duty to consider the anti-trust implications of an agreement submitted under Section 412, since the Board's approval of the agreement may insulate the airlines from attack

under the anti-trust laws. In Putnam v. Air Transport Ass'n of America, 112 F. Supp. 885 (S.D.N.Y. 1953), the plaintiff was a travel agent whose agency agreements had been cancelled by the Air Traffic Conference of America, and the court held that the complaint, which charged a conspiracy, boycott, and discrimination in violation of the anti-trust laws, should not be dismissed for failure to state a cause of action, citing Anderson v. Shipowners' Association of Pacific Coast, 272 U.S. 359 (1926). However, the court held that summary judgment should be granted in favor of the defendants since the agreements among the defendants to employ agents only through the ATC had been approved by the CAB and were therefore immune from attack, by virtue of Section 414 of the 1938 Act.

B. The Plan violates anti-trust principles by preventing Petitioner from competing with the credit card companies but there were no findings concerning such anti-competitive effects and no findings that such restraint was required by a serious transportation need.

The Board in its opinion approving the Area Settlement Plan has failed to recognize that the Plan denies to

Petitioner credit terms which are available to Petitioner's competitors, the credit card companies, through other agreements approved by and filed with the Board.

Before the adoption of the Plan, a commercial account could purchase its air transportation either from an air carrier or a travel agent and could obtain a thirty-day extension of credit from the carrier, the travel agent, or a general purpose credit card company. If the credit were obtained from Petitioner or from a credit card company, the air carrier itself would not be paid for thirty days, or more in the case of a credit card company. Under the present Plan, Petitioner will not be able to offer credit competitively with the credit card companies, since Petitioner will have to pay the air carrier in ten days while the credit card company will not have to pay for thirty or more days, and the credit card company will in addition be paid a commission of up to four per cent by the airline for assuming the credit risk.

The advantages made available to American Express Company, which is both a travel agent and a credit card company, are particularly discriminatory. As a credit card company, it could offer thirty-day credit because it would

not, under the rule approved by the Board in the Credit case, have to pay the airline for the transportation sold for as long as thirty days. This Petitioner could not do. In addition, American Express will be paid two commissions by the airline for air travel sold to its cardholders:- (1) a five per cent commission for its services as a travel agent and (2) a commission of up to four per cent for its credit services, making a total commission of up to nine per cent. By contrast, Petitioner would receive only a five per cent commission for both its credit and travel agent functions, and would have to remit to the airline in ten days. Furthermore, if Petitioner is late in making payment to the airlines, it runs the risk of losing its agency appointment, whereas there is no such penalty for a late payment by American Express as a credit card company.

The facts concerning the competitive situation between Petitioner and such general purpose credit card companies as Hilton Credit Corporation, American Express Company, The Diners' Club and Bank of America, are contained in the Transcript at pages 163 and 164. These facts were also discussed extensively in the Passenger Credit Plans

Investigation, Order No. E-19197, January 16, 1963 at pages 13 and the following pages.

On page 9 of the Appendix to Order No. E-19197, an excerpt from the examiner's decision shows that credit card companies are allowed up to thirty or forty-five days or more to pay for air travel sold to their cardholders. Since the effect of the present Plan will be to deny thirty days credit to Petitioner, it is obvious that credit card companies who enjoy thirty days credit from the airlines will be able to compete more effectively in the financing of the purchase of air transportation.

The amount of commission paid to the credit card companies at the time of the Passenger Credit Plans Investigation is shown on page 9 of the Appendix to Order No. E-19197 as up to four per cent. The Examiner's opinion also contained findings that the cost to the air carriers of using the various credit card plans was from 3.95% to 7.95% (Order No. E-19197, page 13). The Board in its opinion stated that these latter findings inflated the true costs of using the credit card plans, but the Board did not itself make any findings as to the actual costs.

The commission paid to Petitioner, and to other agents, on sales of domestic air travel, is 5%, (Tr. 163). For this 5%, Petitioner not only assumes the risk of credit losses, but further assumes the costs of maintenance of sales outlets, salaries of personnel, and other selling and administrative expenses, including the training of sales personnel to handle the sale of air travel.

In the Passenger Credit Plans Investigation, the Board rejected the argument that the extension of credit by the air carriers through the use of the general purpose credit cards violated the Act. Therefore, the Board is encouraging the use by the airlines and the traveling public of the general purpose credit card facilities and has approved a plan which will have the effect of preventing Petitioner from providing the same and better services on the same terms. The Board has taken this action without recognizing its anti-competitive aspects and without finding that such a restraint on competition is required by a "serious transportation need," Local Cartage Case, supra. p. 31. This refusal by the Board to deal with the competitive realities of the business of selling air trans-

portation on credit clearly demonstrates that the Board has not fulfilled its obligations to Petitioner and to the public under the Act.

When the air carriers have sought in the past to prevent third persons from competing in the financing of sales of air transportation, the Board has refused to approve the agreements proposed for such exclusion and boycott. In the American Express case supra, Order No. E-15692, dated August 25, 1960, the Board had before it an agreement among the carriers not to deal with the American Express credit card plan. The Board disapproved the agreement and used the following language:

"[T]he instant ATC resolution, as interpreted by ATC, appears to be an attempt on the part of the ATC carriers collectively to prevent Express from competing in the credit card field with the carriers' own credit card plans and the credit card plans of its major credit card competitors. Such concerted attempts to boycott a competitor and thus eliminate it as a vital competitive factor have long been condemned by the courts as per se violations of the anti-trust laws.

"In addition, the agreement as construed by ATC, like the recently disapproved IATA resolutions, appears to represent an illegal restraint of trade in that it arbitrarily precludes access by ATC member carriers to traffic which could be generated under the Express credit card plan."

The IATA resolutions referred to in the above citation were disapproved by the Board in Order No. E-15691 dated August 25, 1960, and the resolutions there considered were designed to forbid any use of general purpose credit cards by any air carrier.

- C. The Plan similarly violates anti-trust principles by restraining Petitioner's existing competition with air carriers sales on credit, but there were no findings concerning these restraints as required by law.

The feature of the Plan which is crucial is its requirement of an increase in the number of monthly remittances by airline ticket agents to the air carriers for sales by the agents of air transportation. This increase is from twice monthly to three times monthly for most agents and from once a month to three times a month for those agents having more than ten ATC-authorized locations, of which latter group Petitioner is a member. The reason why this feature is important from the point of view of the airlines is that the bank's charges for operating the Plan are to be paid by the air carriers, and the increased frequency of remittances is designed to create an improvement

in the carriers' cash flow equal to the annual operating costs of the Plan (Tr. 123).

The Board did not consider or make findings with respect to Petitioner's arguments that the accelerated remittance feature of the Plan represented an attempt by the air carriers to eliminate Petitioner as a competitor in the sale of air traffic to commercial accounts on credit. The facts in the record show that Petitioner's annual sales at that time were \$35 million, of which approximately 90%, or \$32 million, represented sales on credit (Tr. 251). The airlines are themselves engaged in the sale of air transportation on credit, including sales through the Universal Air Travel Plan, carrier on-line credit plans, out-for collection plans and other credit devices which were reviewed and approved by the Board in Order No. E-19197, January 16, 1963. In that Order, the Board recognized the active competition between the air carriers and travel agents and said that if the proposed credit plans were not approved, the airlines would not be able to compete since "...air transportation users would undoubtedly turn, in large numbers, to travel agents who extend credit freely." (Order No. E-19197, p. 12).

The airlines also have recognized Petitioner as an active competitor and have tried in various ways to limit Petitioner's competitive effectiveness. The CAB has now under consideration an agreement by the air carriers to prohibit Petitioner from maintaining branch agency offices at the plans of certain large commercial customers. In that proceeding, Docket No. 15455, many interested parties, including such corporations as General Electric Co., Joseph E. Seagram & Sons, Inc., Underwood Corporation and the Singer Company have filed comments with the CAB urging the maintenance of such competitive services by travel agents. The Board summarized such comments as follows:

"The comments of such persons, viewed collectively, indicate, inter alia, the belief that the agreement will restrain the trade of and cause considerable financial loss to travel agents; that commercial customers will be denied a freedom of choice in deciding the manner and means of meeting their travel requirements and will lose the benefits of economy and efficiency that in-plant services provide; and that the proposed restrictions are repugnant to anti-trust principles. The objectors also contest the claim of the carriers that they can serve commercial accounts at less cost than that represented by their agency commission expense, and contend that in-plant locations would result in healthy, not wasteful competition.

Essentially, they regard the rules as an effort to reserve commercial accounts for the airlines at the expense of the agent."

Order No. E-21185,
August 13, 1964, p. 4.

The volume of credit sales which Petitioner has built up over the years again demonstrates that Petitioner is an effective competitor of the airlines and one which the airlines would like to remove. Through increasing the reporting frequency from once every thirty days to once every ten days, the airlines are forcing Petitioner either to increase its capital investment by an amount sufficient to support its credit sales or to abandon its credit practices, which in either event would impair or destroy Petitioner's effectiveness as a competitor.

The airlines have in the period since 1948, with Board approval, extended thirty days credit to Petitioner and other large travel agencies. They have now sought, acting in concert, to end that practice, and with it to end or abridge Petitioner's ability to compete. Although the Board may have the authority to approve such a restraint of trade, it cannot do so without carefully weighing the anti-competitive aspects of the proposed agreement

and specifically finding that such aspects are outweighed by a serious transportation need requiring the approval of the agreement.

In the Local Cartage Case, supra, the Board had under consideration a proposed agreement among the airlines not to make payment to independent truckers of their charges for carting from a consignor's premises to the airport freight moving on a transportation-charges-collect basis. The Board recognized that the effect of such an agreement would be to eliminate the independent truckers as competitors of the airlines' own cartage agents. The following language is particularly relevant:

"The airlines contend that no anti-trust principles are involved because the practice of advancing charges is a gift, gratuitously furnished by the airlines to the independent trucker and relieving him of the expense of collecting his charges from the shipper who engaged him. The answer to this, as previously suggested, is that the airlines are now free individually to terminate the practice. Such freedom, however, does not comprehend the formation of a combination whose participants are bound to terminate the practice, and where the effect of such combination is substantially to restrain competition."

15 C.A.B. at 854.

Holding that the plan clearly violated anti-trust principles and was not required by a serious transportation

need, the Board disapproved the agreement. See also American Express, Petition, Order No. E-15692, August 25, 1960, where the Board disapproved an ATC resolution prohibiting the member air carriers from participating in the American Express credit card plan. The Board found that the resolution "...appears to be an attempt on the part of the ATC carriers collectively to prevent Express from competing in the credit card field with the carriers' own credit card plan..." and was patently offensive under the anti-trust laws.

The Board's treatment of the Plan overlooks the fact that the increase in reporting frequencies for agents with more than ten locations is not an indispensable feature of the Plan. Sufficient improvement in cash flow might be produced by increasing the reporting frequency only for those agents with less than ten ATC-authorized locations. There also are alternative methods of financing the Plan, and it is particularly significant that although the Plan is allegedly designed to benefit both the airlines and the travel agents, the Plan as presently approved is to be paid for, in effect, entirely by the travel agents through the above discussed improvements in the

carriers' cash flow (Tr. 116, 155-156). Furthermore, this is an unreliable method of financing the Plan since the improvement in cash flow will vary from year to year depending upon the volume of agents' sales, with a resulting windfall to the air carriers as sales volume rises.

As to alternative methods of financing the Plan, it should be noted that the Board disregarded as being of no significance a letter from a Chicago bank stating that the bank could handle the mechanics of the Plan without the necessity for an increased remittance frequency (Tr. 151 and 286). The Board's treatment of the Plan also overlooks the fact that compelling Petitioner to contribute to the costs of the Plan by increasing the remittance frequency results in a greater burden of expense to Petitioner than the amount of the resultant benefits to the air carriers. This is so since the cash flow improvement to the air carriers is measured by a 5% figure, (Tr. 252, n. 8); however, unless additional working capital can be obtained by Petitioner at a 5% rate, the expense to Petitioner in continuing its present business will be more than the benefit to the carriers.

Furthermore, Petitioner is required to contribute substantially more than its proportionate share of the operating costs of the Plan, since Petitioner will now be required to remit three times a month as opposed to once a month, while all other agents, except for Ask Mr. Foster Travel Service, Inc., are presently remitting twice a month or more frequently and under the Plan will now remit three times monthly. Therefore, the improvement in the carriers' cash flow from Petitioner's increased remittances is proportionately much greater than that for the other travel agents.

Other methods of financing the Plan, including use of the airlines' Clearing House and the possibility of remittance of cash sale proceeds but not of credit sale proceeds may be mentioned here merely to illustrate that the Board failed to focus on the purposes and effect of the increased frequency of remittance provisions of the Plan.

III. CONCLUSION

For the reasons set forth herein, the order under review should be set aside with respect to the Petitioner

Respectfully submitted

Paul Reiber
Attorney for Petitioner

January 28, 1965

APPENDIX

Relevant provisions of the Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301 et seq., are:

TITLE IV - AIR CARRIER ECONOMIC REGULATION

Methods of Competition

Sec. 411. The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

* * * * *

POOLING AND OTHER AGREEMENTS

Filing of Agreements Required

Sec. 412. [72 Stat. 770, 49 U.S.C. 1382] (a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to

the establishment of transportation rates, fares, charges, or classifications , or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

Approval by Board

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

* * * * *

Section 15, Shipping Act, 1916, 39 Stat. 733, 46 U.S.C. 814, as in effect at enactment of Civil Aeronautics Act of 1938, predecessor statute to Federal Aviation Act of 1958.

Sec. 15

That every common carrier by water, or other person subject to this Act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or

otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The terms "agreement" in this section includes understandings, conferences, and other arrangements.

The board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the board shall be lawful until disapproved by the board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

All agreements, modifications, or cancellations made after the organization of the board shall be lawful only when and as long as approved by the board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provision of the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and amendments and acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", and amendments and acts supplementary thereto.

Whoever violates any provision of this section shall

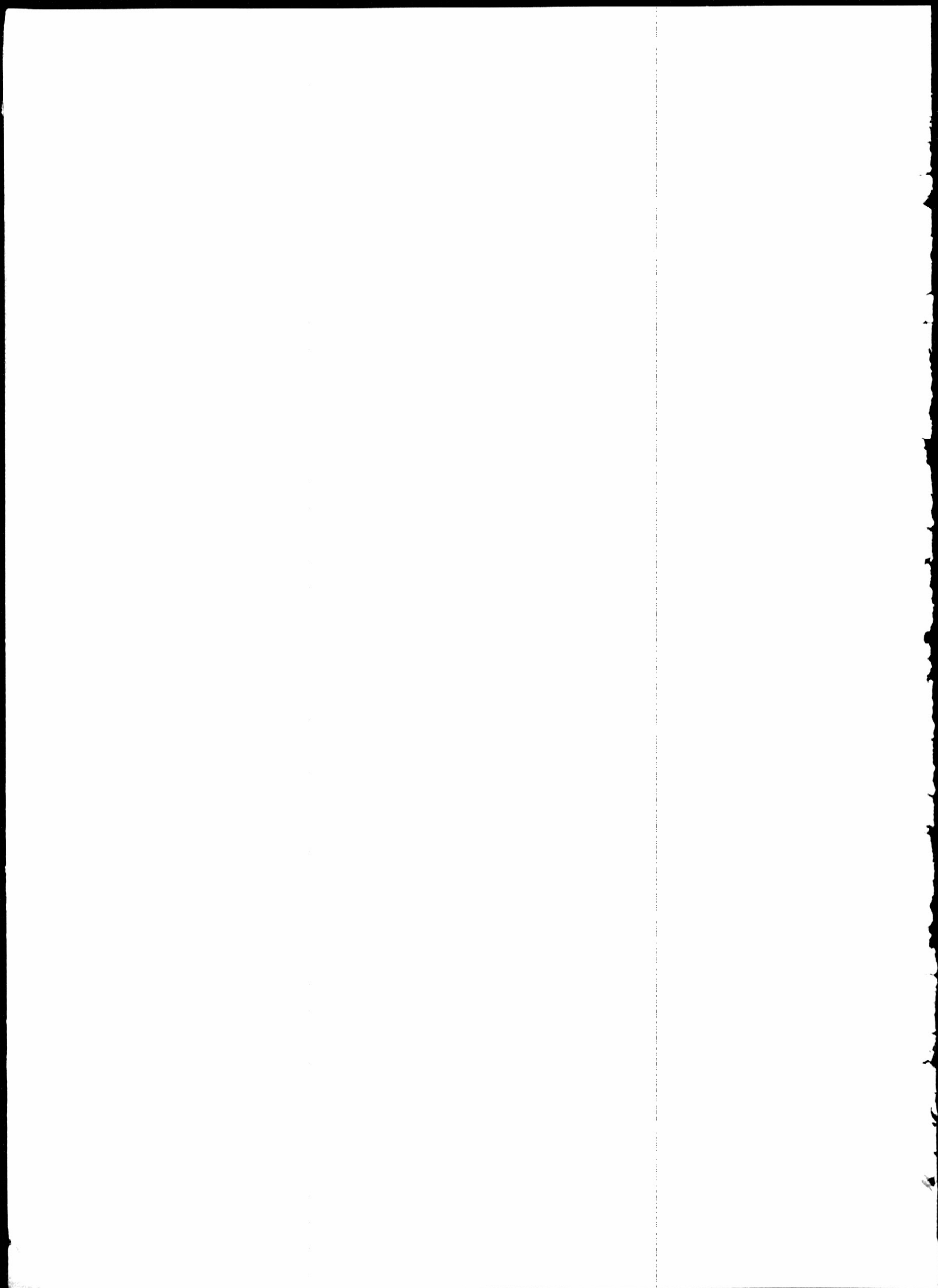
be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

* * * * *

Relevant provisions of the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 1001, as amended, are:

Sec. 2. As used in this Act-...(d) ORDER AND ADJUDICATION. - "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) LICENSE AND LICENSING. - "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation amendment, modification, or conditioning of a license.



FILED MAR 5 1965

BRIEF FOR RESPONDENT

Nathan J. Paulson
CLERK

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,946

FUGAZY TRAVEL BUREAU, INC.,
Petitioner,

v.

CIVIL AERONAUTICS BOARD,
Respondent.

ON PETITION FOR REVIEW OF ORDERS
OF THE CIVIL AERONAUTICS BOARD

WILLIAM H. ORRICK, JR.,
Assistant Attorney General,

LIONEL KESTENBAUM,
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Litigation and Legislation,

FREDERIC D. HOUGHTLING,
Attorney,
Civil Aeronautics Board.

(i)

COUNTERSTATEMENT OF QUESTIONS PRESENTED

In respondent's view, the issues for decision are:

1. Whether the Board on petitioner's demand was required to hold an evidentiary hearing before approving the Standard Agent's Ticket and Area Settlement Plan under section 412 of the Federal Aviation Act, either by the terms of that Act or the Administrative Procedure Act, or as a matter of due process of law or sound administrative discretion?

2. Whether the Board's findings were adequate to support its conclusion that the Plan as modified is consistent with the public interest?

(iii)

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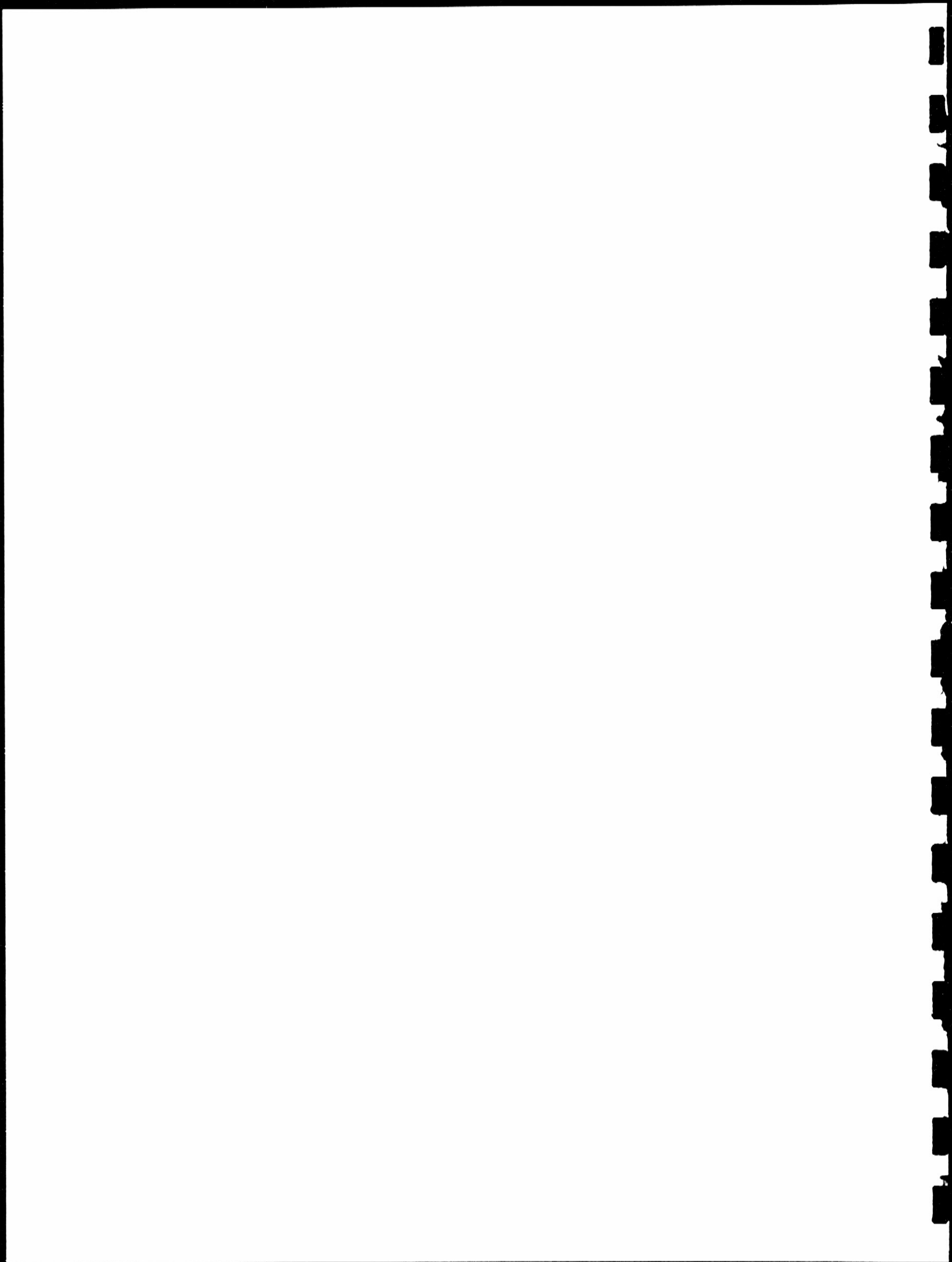
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18, 946

FUGAZY TRAVEL BUREAU, INC.

Petitioner,

v.

CIVIL AERONAUTICS BOARD,

Respondent.

ON PETITION FOR REVIEW OF ORDERS
OF THE CIVIL AERONAUTICS BOARD

BRIEF FOR RESPONDENT

COUNTERSTATEMENT OF THE CASE

Petitioner seeks review of two orders of the Civil Aeronautics Board. The first of these (Order No. E-20741, April 24, 1964; Tr. 247) found a certain agreement among the scheduled airlines of the United States known as the "Standard Agent's Ticket and Area Settlement Plan" (referred to here and in the Board's orders as simply "the Plan") to be not adverse to the public interest, and accordingly approved said agreement under section 412 of the Federal Aviation

Act (infra, p. 44). The second (Order E-21180, August 12, 1964; Tr. 285) denied reconsideration of the first.

Petitioner's opposition to the Plan focuses on a single one of its features: its requirement that henceforth all travel agents must report and remit for their domestic (and some international) airline ticket sales three times a month. At present petitioner, as one of four large chain agencies having more than ten approved locations, has the privilege of reporting and remitting only once a month; all other agents must presently report and remit at least twice a month. Petitioner contends that its business is built wholly on the sale of air travel on credit, that the increased frequency of remittance called for by the Plan will make it impossible for petitioner to extend the usual thirty days' credit to its customers, and consequently that the Plan will drive it out of business. It charges that the Board erred in approving the Plan over its objection without an evidentiary hearing, and in failing to make findings justifying what it calls the "anticompetitive implications" of the Plan.

A travel or ticket agent, as the name implies, is an independent businessman who represents airlines, other common carriers, hotels, etc., in the sale of the latter's services, and who is compensated by agreed commissions on the tickets and accommodations he sells. ^{1/}

^{1/} See the statutory definition in section 101(34) of the Federal Aviation Act (infra, p. 43).

The Board does not license travel agents, nor does it regulate the contractual arrangements between individual airlines and such agents as they may choose to employ. ^{2/} Section 412 of the Act (infra, p.44), however, requires the airlines to file with the Board all agreements among themselves "for controlling . . . destructive, oppressive, or wasteful competition, . . . or for other cooperative working arrangements." The Board is directed to disapprove agreements it finds "adverse to the public interest", and to approve those not so found; approval, under section 414 (infra, p. 45), confers antitrust immunity. Agreements among the airlines as to the terms on which they will deal with travel agents fall within the scope of section 412, and this fact gives the Board the limited power it has to relate airline-agent relationships in the public interest. ^{3/}

The airlines, through their trade organization, the Air Traffic

^{2/} The Board's direct control over the affairs of agents or similar persons is limited to its power, under section 411 of the Act (infra, p.44), to investigate and prohibit "unfair or deceptive practices or unfair methods of competition" by them, or by carriers with respect to them.

^{3/} Agreements as to the terms on which airlines will employ and compensate agents are plainly "cooperative working arrangements", see McManus v. Civil Aeronautics Board, 286 F.2d 414 (C.A. 2), cert. denied 366 U.S. 928 (1961); cf. United States Lines Co. v. Civil Aeronautics Board, 165 F.2d 849 (C.A. 2, 1948). Historically, also, a principal purpose of such agreements has been to avert destructive competition for agents' business, see ATC Agency Resolution Investigation, 29 C.A.B 258, 271, 285, 288 (1959).

Conference of America (ATC), adopted and filed with the Board their first "ATC Agency Resolution" and "Sales Agency Agreement" in 1940; in 1945, they adopted a new Resolution and Agreement which, while frequently amended, have remained in force to the present day. ^{4/} The Board has not been unaware of the anti-competitive implications of the conference system of appointing and retaining agents set up by the ATC Agency Resolution; it has found it necessary from time to time to disapprove a number of ATC-proposed amendments, and to require that other amendments be made, in order to protect the rights of agents, prevent undue limitations on entry into the agency field, and generally to foster competition. ^{5/} Basically, however, the Board has found the conference system to be in the public interest, and has accordingly approved the ATC Agency Resolution under section 412. Its most recent renewal of that approval, made after plenary hearing in the ATC Agency Resolution Investigation, 29 C.A.B. 258 (1959), 30 C.A.B. 570 (1960), was affirmed in McManus v. Civil Aeronautics Board, 286 F. 2d 414 (C.A. 2), cert. denied 366 U.S. 928 (1961). ^{6/}

^{4/} The Agency Resolution is the basic agreement among the airlines themselves; the Sales Agency Agreement is the standard contract each agent must sign before being eligible for airline appointment. The Plan amends both in important respects (Tr. 1-17).

^{5/} See, e.g., the ATC Agency Resolution Investigation, 29 C.A.B. at 259, 30 C.A.B. at 570-2, 576.

^{6/} See also McManus v. Civil Aeronautics Board, 310 F.2d 762 (C.A. 2, 1962), involving the very similar International Air Transport Association (IATA) Agency Resolution.

Petitioner does not here challenge the Board's continued approval of the Agency Resolution and Sales Agency Agreement.

The 1945 Agency Resolution provided for a minimum of four remittances a month by all agents, a frequency which for most agents was decreased to two per month in 1948 and has remained so ever since. In May 1946, ATC filed an amendment permitting individual airlines to contract with large chain agencies (i.e., those they had appointed to represent them at ten or more approved locations) for less frequent remittances. ^{7/} Subsequent amendments placed a once-a-month minimum on the remittance frequency of large chain agencies, and gave airlines the alternative of allowing such agencies to remit three times a month, but with a substantially longer grace period to accommodate their centralized auditing and reporting systems (Tr. 174, 248). None of these remittance-frequency provisions and amendments thereto were commented on by either ATC or the agents at the time of filing, or in the ATC Agency Resolution Investigation, supra, and there is no indication that the Board has ever focused on this question. Petitioner's tenth approved location was placed on the ATC Agency List in August

^{7/} Agreement C.A.B. 403-A-4, filed May 31, 1946, approved without comment in Order E-804, September 18, 1947. It should be noted that as to both large and small agencies the frequencies specified in the Agency Resolution have always hitherto been mininums only; individual airlines have been free to require, and have occasionally required, individual agents to remit more frequently (Tr. 174).

1959, making it eligible for the once-a-month remittance privilege. Not until May 1962, however -- nearly three years later -- did the last of the domestic trunklines contract with it for remittance on that basis (Tr. 278). Under the Plan, filed four months later in September 1962, the airlines proposed to abolish the prior special treatment of large chain agencies, and henceforth to require all agents to remit on the same three-time-basis.

This increased frequency of remittance was a by-product of the Plan. Its principal purposes, as presented by the airlines, were to allow travel agents (1) to stock a single standard ticket for all domestic and some international air travel, instead of having to stock separate tickets for each appointing airline, as ~~to~~^{at} present; and (2) to make a single consolidated periodic report of and remittance for their air ticket sales, instead of the present separate reports and remittances to each appointing airline (Tr. 27-9). As a necessary control measure, the airlines have always numbered their tickets and required agents to issue and account for them in strict numerical order (Tr. 35, 86). For an agent who represents any substantial number of airlines, these features of the existing system have been a source of considerable trouble and expense for inventory control, bookkeeping, and preparation of reports. The Plan relieves the agent of the need for maintaining most of these separate ticket sequences, for sorting auditor's coupons by airline at the end of the reporting period, and for computing the net amount due each airline. As a consequence, however, the Plan requires a central clearinghouse to check the agents' consolidated reports for numerical sequencing and arithmetic, to sort and distribute auditor's

coupons, and to compute and credit the amount due each airline.

The airlines determined that this function could best be performed by a series of area banks, rather than by an industry-operated clearinghouse (Tr. 30, 36). For their services, the potential area banks contacted by the airlines proposed to charge a service fee of 2-1/2 - 3 cents per item handled (Tr. 27, 46). ^{8/} Not wishing to undertake this added expense for a program which they considered to be primarily for the agents' benefit, the airlines proposed to recoup the bank service charges by shortening the time lag between agents' ticket sales and remittances -- specifically, by abolishing the special remittance frequencies allowed large agents, by increasing all agents' remittance frequencies to three a month, and by shortening substantially the "grace period" for preparation and delivery of the reports following the end of each reporting period. In submitting the Plan, the airlines presented "cash flow" studies to show that this speed-up of remittances, at an assumed five percent per annum interest rate, would approximately cover the expected bank charges (Tr. 41-5).

^{8/} On Chicago bank wrote ATC and the Board that it wished to be considered for designation as an area bank and that "we are in a position to handle the mechanical aspects of the Plan without requiring a change in the present semi-monthly reporting of travel agents or in present grace period procedure (Tr. 151). While petitioner chooses to construe this as an offer to perform the functions of an area bank without charge, the Board did not so interpret it, and accordingly did not consider this letter to afford any basis for disapproving the Plan (Tr. 286).

Following the submission of the Plan for Board approval, the American Society of Travel Agents (ASTA) -- a trade organization representing primarily the smaller agents -- and a number of individual agents filed adverse comments. While approving the broad objectives of the Plan, they criticized certain of its aspects, principally its increased reporting and remittance frequencies, which they claimed were burdensome and unnecessary. Petitioner and another large agency commented that the Plan took no account of their special problems -- in particular, they claimed that the shortened grace periods would make their centralized accounting procedures impossible (Tr. 57, 59, 64-7). Petitioner asserted that due process and the Standard Airlines case ^{9/} required a formal hearing before the Board could approve the Plan (Tr. 68-70). ASTA and several individual agents (but not at this time petitioner) suggested that agents ought to be allowed to remit monthly, like the airlines' other credit customers (Tr. 74-5, 55G, 55H, 58C, 93). ^{10/} ATC in turn filed rebuttal comments justifying the Plan and attacking certain of ASTA's contentions (Tr. 85). Subsequently ATC representatives met with members of the Board's staff and attempted to satisfy their doubts about the Plan (Tr. 98).

^{9/} Standard Airlines v. Civil Aeronautics Board, 85 U.S. App. D.C. 29, 177 F.2d 18 (1949).

^{10/} ASTA specifically supported the Plan's abolition of special remittance frequencies for large agents, and indeed opposed their retention for sales not coming under the Plan (Tr. 80).

After reviewing all these comments, the Board in Order E-19945 found that, although the Plan appeared to promise substantial benefits to airlines and agents alike, it did not yet have sufficient information to determine whether the details of the Plan as submitted were in the public interest; accordingly, it deferred action (Tr. 120). Among the points on which the Board requested further comments from both the airlines and the agents were: (1) the necessity for using area banks; (2) the allocation of the Plan's costs between agents and airlines; (3) the necessity for the proposed speed-up of remittances and shortening of grace periods, and the effect of these measures on the airlines' cash flow (the Board indicated it thought ATC's proposals would over-compensate the airlines for the bank charges they were assuming); (4) the difficulties chain agencies with centralized accounting systems would have in meeting the new remittance deadlines. ^{11/}

Comments in response to this order were subsequently filed by ATC on behalf of the airlines (Tr. 167), ASTA (Tr. 218), petitioner and the other large chain agencies (Tr. 161, 143, 153, 226, 233, 234), and

^{11/} Commenting on these difficulties and on the proposed abolition of special reporting frequencies for large chain agencies, the Board said:

"[T]he reporting difficulties anticipated by multiple-location agents using central bookkeeping might be resolved by reporting on an estimated basis. [footnote omitted] Otherwise, it is not apparent to the Board that multiple-location agents should operate under procedures more liberal than those applicable to agents with single locations."
(Tr. 124) (emphasis added).

numerous smaller agents. Petitioner reiterated its contentions that the Plan would drive it out of business and that it was legally entitled to an evidentiary hearing; it also contended for the first time that the Plan was unfair in not allowing it the same thirty days' credit that airlines extend to members of the Universal Air Travel Plan (UATP) and other credit card plans (Tr. 162-6). The other large chain agencies ~~(Tr. 162-6). The other large chain agencies~~ (Thos. Cook & Son, American Express, and Ask Mr. Foster) did not insist on keeping their once-a-month remittance frequencies, but did insist that their central accounting systems required longer grace periods and/or the right to report on an estimated basis (Tr. 143, 157-9, 226, 233). Answering attacks on the area-bank feature of the Plan, ATC explained why it considered these banks and their attendant service charges indispensable elements of the Plan, requiring in turn increased remittance frequencies; it did not, however, oppose estimated remittance by large agencies (Tr. 172-4, 241).

In its Order E-20741, the Board weighed all the comments submitted and determined to approve the Plan, with certain conditions, as being in the public interest (Tr. 247). It found that, viewed broadly, the Plan would be of significant practical benefit to both airlines and agents (Tr. 259-60). It rejected the argument that the airlines must extend the same credit to agents that they do to their own UATP and other credit customers, pointing to the

fundamental differences in economic function and status between the two groups -- the airlines' credit customers being ultimate users of transportation, and receiving no commissions or discounts when purchasing it, whereas agents are neither purchasers nor users but simply instrumentalities to help the airlines sell their services (Tr. 250-1). The Board also rejected petitioner's contention that it was entitled as a matter of law to an evidentiary hearing, pointing out inter alia that the Board does not license agents or confer on them any authority or property rights (Tr. 251-2). As a matter addressed to its discretion, the Board held that a hearing would serve no useful purpose, since it found there were no significant factual disputes requiring resolution (Tr. 252).

The Board concluded, in line with ATC's views, that the area banks were a necessary feature of the Plan (Tr. 257), and that the shift to three remittances a month was accordingly necessary; but it held that the grace periods following each report period should be increased by one working day from those proposed by ATC, a change which would both reduce the delinquency hazard for agents and, the Board calculated, would eliminate the excessive gain in cash flow it found would result from the Plan as proposed (Tr. 252-3). ^{12/}

^{12/} Shortening the report period by two days reduces the average time lag between ticket sale and remittance (i.e., the length of time the agent has the use of the airline's money) by one day. Accordingly, going from 2 to 3 remittances a month cuts the average time lag for most agents by 2.5 days, while going from 1 to 3 remittances a month cuts this lag for the few large agents by 10.1 days. Grace periods (Footnote continued on Page 12)

Furthermore, to meet the central-accounting problems of large chain agencies, the Board required that such agencies be allowed to remit on an estimated basis, "provided that the procedures by which this is accomplished do not result in a more favorable effective time allowance than is accorded to agents generally under the Plan" (Tr. 253). Such chain agencies, moreover, are not required to come under the Plan in its introductory phase until it becomes applicable to all of their branches (Tr. 256). ^{13/}

Petitioner sought reconsideration (Tr. 264), still arguing that the Plan would destroy its business, that the Board's order trenched on its property rights, and that the Plan involved an unfair discrimination by the airlines in the extension of credit. Petitioner also raised a new charge that the Plan was simply a "tactic", a part of a continuing conspiracy by the airlines to drive it out of business. Replying, ATC pointed out that the Plan had been in preparation long before petitioner became eligible for once-a-month remittance under the existing resolution (Tr. 277-8).

under the Plan are figured in working days, each of which is equivalent on the average to 1.43 calendar days. The Plan as approved thus cuts the average grace period for delivered remittances from 7 to 5.7 calendar days, and for mailed remittances from 5 to 4.3 calendar days, or an average speed-up of 1.0 calendar day, assuming that half the agents deliver and half mail. Thus the total speed-up in remittances under the Plan as approved amounts to 3.5 days for most agents, or 11.1 days for the large agents. Of course, as ATC pointed out, many agents under the prior system remitted well before the end of the grace period (Tr. 178-80).

^{13/} Because of this provision, although area-by-area implementation of the Plan has now in fact begun, it is not yet applicable to petitioner.

The Board in Order E-21180 denied the petition for reconsideration (Tr. 285). It reiterated the findings which supported its conclusion that the Plan is in the public interest, and again rejected the contention that due process required an evidentiary hearing. As to petitioner's credit arguments, it held again that the airlines are not obligated to supply their agents with working capital, to enable the latter to extend credit or for any other purpose; furnishing working capital, it held, is the agents' own responsibility. Petitioner's claim that the Plan would "destroy" its business was rejected as "speculative and without supporting evidence that a business of Fugazy's magnitude could not command sufficient resources to support the extension of credit." (Tr. 286)

Petitioner thereafter timely filed the present petition for review under section 1006 of the Act (infra, p. 46). ^{14/}

STATUTES INVOLVED

Relevant provisions of the Federal Aviation Act are set forth in the Appendix hereto (infra, pp. 43-46).

SUMMARY OF ARGUMENT

I

Neither the Administrative Procedure Act, nor the Federal Aviation Act, nor the constitutional requirements of due process gave petitioner

^{14/} Petitioner also cites section 10 of the Administrative Procedure Act, 5 U.S.C. 1009; this Act, however, adds nothing to the review provisions of the Federal Aviation Act.

a right to have an evidentiary hearing before the Board approved the Plan. The APA's requirements for adjudicatory hearings apply only where the underlying statute or the Constitution make a hearing mandatory. The Federal Aviation Act's careful pattern of specifying hearings in some situations but not in others, together with the magnitude of the Board's task in carrying out its duties under section 15, indicate that Congress did not intend to make hearings mandatory under that section. Section 15 of the Shipping Act, cited by petitioner, provides no valid precedent to the contrary.

Nor did due process require a hearing. No action of the Board has impinged on petitioner's right to be or remain a travel agent, hence no "license" is involved here. The actual effect of the Plan, by shortening the time during which agents can hold and use the airlines' funds, is to impose on the agents, in return for the Plan's benefits, the cost of obtaining replacement working capital -- a cost demonstrably minimal. Petitioner has in no way shown that this feature of the Plan will interfere with its ability to remain in business; but if petitioner's credit is really this poor, the public interest could hardly require the airlines to leave their funds in its hands longer than they do with other agents. Petitioner's privilege to hold the airlines' funds for any particular period is purely contractual in origin, and the contract in question is expressly made terminable at will; accordingly, the Plan violates no legal right of petitioner's. For all these reasons, none of the cases are apposite

which hold hearings mandatory before the government acts directly to interfere with an individual's liberty or property rights.

Finally, the Board did not abuse its discretion in refusing to hold an evidentiary hearing, since petitioner plainly failed to show that there were material disputed facts at issue whose resolution required such a hearing, or that such a hearing would serve any useful purpose in determining whether the Plan is in the public interest.

II

The Board's findings that the Plan promises important benefits, and that increased remittance frequencies are necessary to allocate the costs associated with these benefits, are sufficient to justify the increased frequencies of which petitioner complains. Petitioner had no vested right to a continuation of the prior remittance frequencies which discriminated in its favor against smaller agencies; the onus was on it to prove that the public interest positively requires continuation of this discrimination, not on the Board to justify allowing the airlines to discontinue it.

The supposed "anti-competitive effects" of the Plan prove on analysis to be non-existent, and thus required no findings to justify them. Petitioner is not a purchaser or user of transportation, and so is not entitled to the credit the airlines extend to such purchasers and users. Nothing in the Plan keeps petitioner from competing on

equal terms with the airlines in selling transportation; what petitioner actually wants is enforced discrimination in its favor, in the form of a free supply of working capital. Petitioner has not shown that the Plan prevents it from competing with credit-card companies; on the contrary, it is patent that these companies in no way compete with agents, but perform entirely separate and distinct functions. Hence all of these attacks on the Board's findings are without merit.

ARGUMENT

- I. The Board did not exceed its powers or deny petitioner any right when it approved the Standard Agent's Ticket and Area Settlement Plan without an evidentiary hearing.
 - A. The Administrative Procedure Act does not require a hearing where neither the governing statute nor due process impose such a requirement.

Despite petitioner's contentions to the contrary, the Administrative Procedure Act does not require an evidentiary hearing in circumstances not otherwise requiring one as a matter of statutory or constitutional compulsion. On the contrary, section 5 of the Act (5 U.S.C. 1004) explicitly applies to "cases[s] of adjudication required by statute to be determined on the record after opportunity for an agency hearing." (emphasis added) In this context "statute" means the governing statute or the Constitution, not the Administrative Procedure Act itself. See, e.g., LaRue v. Udall, 116 U.S. App. D.C. 396, 324

F.2d 428, 432, cert. denied 376 U.S. 907 (1963); Gart v. Cole, 263 F.2d 244, 251 (C.A.2), cert. denied 359 U.S. 978 (1959); First National Bank of McKeesport v. First Fed. Savings & Loan Assn. of Hempstead, 96 U.S. App. D.C. 194, 225 F.2d 33, 36 (1955). This conclusion follows whether or not the Board's action here is classified as "adjudication" under the APA, as this Court had occasion to point out only last month in Joseph E. Seagram & Sons v. Dillon, ____ U.S. App. D.C. ____, ____ F.2d ____ (No. 18465, slip opinion, January 21, 1965), p. 3, n. 3. ^{15/}

B. The Federal Aviation Act does not require a hearing before the Board approves an agreement under section 412.

1. The pattern of the Act indicates that Congress intended no such requirement.

Absent a due-process requirement, shown in the next section not to exist here, the question of when the Board can act only after a hearing is one to be resolved from the language and intent of the governing statute. The language of section 412, as petitioner admits, plainly does not require a hearing -- an omission which takes on added significance in view of the care with which Congress specified

^{15/} Actually, the Board's action here more nearly resembles rule-making than adjudication. It regulates future conduct exclusively; it governs the relations of all domestic airlines with all agents; it neither attaches legal consequences to the past actions of any party, nor adjudicates any party's present status.

"after notice and hearing" in each specific regulatory provision of the Act where it intended such a requirement to apply.^{16/} In Eastern Airlines v. Civil Aeronautics Board, 87 U.S. App. D.C. 331, 185 F.2d 426 (1950), vacated as moot 341 U.S. 901 (1951), and again in American Airlines v. Civil Aeronautics Board, 97 U.S. App. D.C. 324, 231 F.2d 483 (1956), this Court held that the omission of the words "after notice and hearing" in section 416 (b)(1), in the light of their inclusion in section 416(b)(2) and elsewhere, indicates a Congressional purpose to allow the Board to grant exemptions without hearing under the former provision. Similar is this Court's holding in Springfield Airport Authority v. Civil Aeronautics Board, 109 U.S. App. D.C. 197, 285 F.2d 277 (1960), followed by the Eighth Circuit in Nebraska Department of Aeronautics v. Civil Aeronautics Board, 298 F.2d 286 (C.A. 8, 1962), with respect to the necessity for hearings under the suspension-of-service provision of section 401(j).

The Eastern case, supra, also held that the words "if the Board

^{16/} Such a requirement appears in sections 401(c), (f), (g), (j), (m), and (n); 402(d) and (f); 406(a); 408(b) and (e); 411; and 416(b)(2) [49 U.S.C. 1371(c), (f), (g), (j), (m), and (n); 1372 (d) and (f); 1376(a); 1378(b) and (e); 1381; and 1386(b)(2)], to name only those occurring in a single title of the Act. On the other hand, the requirement is omitted in the last sentence of section 401(j) and in sections 403(a), 409(a), 410(a), 412, 416(a) and (b)(1), and 417 [49 U.S.C. 1371(j), 1373(a), 1379(a), 1380(a), 1382, 1386(a) and (b)(1), and 1387].

finds", in a section of the Act not otherwise requiring a hearing, do not import such a requirement; while the Nebraska case, supra, held that the general requirement of section 1005(f) (infra, p. 41), that Board orders set forth the findings of fact on which they are based, likewise does not make evidentiary hearings mandatory in all cases. Rather, Nebraska upheld reliance by the Board in non-hearing cases on just such written materials filed by interested parties as the Board relied on here. Finally, McManus v. Civil Aeronautics Board, 310 F.2d 762 (C.A. 2, 1962) must be taken as holding sub silentio that section 412 does not require a hearing, since petitioner there asserted that the Board's refusal to hold an evidentiary hearing on the IATA Agency Resolution invalidated its order of approval.

2. The scope of section 412 and its administrative construction both argue against the requirement of a hearing.

The very breadth of section 412 -- it applies in terms to a substantial portion of all the contracts, great and small, which an airline is likely to make, including many which are plainly innocuous -- negatives the idea that Congress could have intended to require a formal hearing on every such contract. Many hundreds of such agreements are filed with the Board each year, ranging in importance from IATA agreements fixing worldwide air fares, to agreements between two airlines for joint baggage handling at out-of-the-way terminals.

Hearings could not possibly be held on all of them.

It has been the Board's practice, since its establishment in 1938, (a) to publish lists of agreements filed under section 412; (b) to rely in the great majority of cases on written comments filed by interested parties, plus analysis by the Board's own staff, in approving or disapproving them; and (c) only to convene full evidentiary hearings, as a matter of discretion, in that handful of cases where (i) the agreement is of major importance to the parties and the public, and (ii) there are important public-interest issues at stake whose determination requires the resolution of disputed questions of fact. In view of the magnitude of the task, it is hard to see how the Board could do otherwise. Certainly its unbroken administrative interpretation of section 412 is entitled to "great weight" with the courts. Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294 (1933); United States v. American Trucking Assns., 310 U.S. 534 (1940).

3. Section 15 of the Shipping Act presents no valid analogy.

Petitioner in its brief discusses none of the foregoing cases holding that hearings are not required under sections of the Federal Aviation Act not so specifying. It does, however, seek to draw an analogy with section 15 of the Shipping Act, 46 U.S.C. 814, which it claims was interpreted as requiring an adjudicatory hearing under comparable circumstances, even prior to the 1961 amendment which added an explicit hearing requirement.

We express no opinion as to whether the pre-1961 Shipping Act section 15 did or did not in fact require hearings prior to approval of agreements filed thereunder. We do point out, however, (1) that despite the views of at least some Senators (Pet. Br. 17), no court ever so held; and (2) that in any event, the significant differences between the two statutes, and between the particular sections involved, keep any possible interpretation of the Shipping Act section from having material weight for the interpretation of section 412.

First, Isbrandtsen Co. v. United States, 93 U.S. App. D.C. 293, 211 F.2d 51, cert. denied 347 U.S. 990 (1954), cited by petitioner, does not hold that before 1961 hearings were required under section 15 of the Shipping Act. In that case the Maritime Board, at the demand of objecting parties, scheduled a hearing on a dual-rate agreement filed by a shipping conference, but allowed the agreement to go into effect prior to the hearing because the Board considered it covered by the previously approved agreement establishing the conference. This Court held that the dual-rate agreement was either a new agreement or a modification of an existing agreement, and in either case could not under section 15 lawfully be put into effect prior to its formal approval by the Maritime Board -- an approval which that Board did not purport to have granted. Thus, the case stood for the proposition, not that agreements under section 15 could be approved only after hearing, but that they could be put into

effect only after being approved, following whatever procedural steps the agency itself considered necessary. The opinion indicates that the Maritime Board apparently considered a formal hearing a prerequisite to approval; but the Court did not so hold.

As for Anglo-Canadian Shipping Co. v. Federal Maritime Comm'n., 310 F.2d 606 (C.A. 9, 1962), not only was this case decided after section 15 had been amended to require hearings, but the order under review had been entered in a proceeding in which extensive hearings had in fact been held. The court found, however, that neither the evidence adduced at these hearings nor the Maritime Commission's findings adequately supported its order, and accordingly set the order aside and remanded the case to the Commission for new hearings. The case hardly stands for the proposition that hearings were required under section 15 before 1961; any expressions therein which might be so interpreted are at most dicta, and to the extent that they rely on the Administrative Procedure Act fly in the face of the numerous well-considered cases cited in part I-A of this brief (supra, p. 16-7).

Second, the major differences between the Shipping and Aviation Acts make the former valueless in interpreting the latter. The Shipping Act notably fails to exhibit the pattern of the Aviation Act wherein Congress carefully specified "after notice and hearing" in each section where it wanted this requirement to apply. On the contrary, the Shipping Act as enacted in 1916, 39 Stat. 728, 46 U.S.C.

801-842, did not specifically require hearings in any of its regulatory sections -- even those authorizing the maritime agency to prescribe rates, classifications, etc., 46 U.S.C. 816-18, ^{17/} where due process is universally held to require hearings -- but instead included as a separate section, 46 U.S.C. 822, a vaguely worded general requirement that agency orders "relating to any violation of this Act shall be made only after full hearing," ^{18/} Thus the pattern of the Shipping Act does not give rise to the inference, so strong under the Aviation Act, that Congress intended to require hearings only where it expressly so stated.

Furthermore, while section 15 of the Shipping Act is in some sense the ancestor of section 412 of the Aviation Act, they are far from being "almost identical", as petitioner claims (Pet. Br. 15). Section 15 covers a limited class of agreements of a definitely anti-competitive, discriminatory, or predatory nature; ^{19/} whereas, section

^{17/} Compare sections 1002(d), (f), (g), and (h) of the Federal Aviation Act, 49 U.S.C. 1482(d)-(h).

^{18/} The scope of this requirement, and particularly whether it applies to orders approving agreements under section 15, have never been judicially determined.

^{19/} Agreements "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement."

412 applies to a substantially broader class of agreements, which are described in decidedly more neutral terms. ^{20/} Moreover, section 15 directs the maritime agency to determine whether an agreement is "unjustly discriminatory or unfair as between carriers, shippers, exporters, ^{importers,} or ports" -- questions concerning the effect of such an agreement on particular individuals, groups, or localities; whereas the Board under section 412 is only called on to determine whether or not an agreement is "adverse to the public interest." Finally, section 15 expressly makes it unlawful, and subject to a heavy penalty, to carry out any such agreement before approval or after disapproval; whereas section 412 contains no such penal provision. The difference in tone of the two sections is unmistakable, and supports the idea that Congress might well have wished to require a hearing prior to approval under section 15, but not necessarily under section 412. ^{21/}

^{20/} Agreements "for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements."

^{21/} We do not believe that the memorandum of the Assistant General Counsel of the Maritime Board quoted in petitioner's brief (pp.21-3) requires extended comment from us. It shows at most that the Maritime Board (since abolished) interpreted its governing statute differently than this Board interprets the Federal Aviation Act. In view of the differences between the two statutes, adverted to above, this is perhaps not surprising. Insofar as the memorandum urges the proposition that due process and/or the Administrative Procedure Act require a hearing before a government agency takes any action which will have "competitive impact" on a complaining party, we note only that not one of the cases cited in the memorandum stands for any such proposition. See, as refuting this proposition, the cases cited supra, p.16-7, and infra, pp. 32,34.

C. Due process did not make a hearing mandatory under the circumstances of this case.

Even if no provision of the Federal Aviation Act required the Board to convene a full evidentiary hearing before approving the Plan, petitioner argues, failure to hold such a hearing on its demand nevertheless denied it due process of law. Whatever might be the due-process implications of a different set of circumstances, however, we submit it is clear beyond peradventure that neither the effects of the Board's action here on petitioner, nor the nature of that action, are such as to entitle petitioner to a hearing as a matter of constitutional right.

In the first place, no act of the Board has impinged upon petitioner's right to be or remain in the travel agency field. Neither petitioner nor any other person requires any license or other form of permission from the Board or any other governmental body to become or remain a travel agent. Nor does the Plan as submitted to and approved by the Board undertake to prevent petitioner or anyone else from becoming or remaining a travel agent. The underlying ATC Agency Resolution, to which the Plan is an amendment, did set up a system for limiting airline appointment of agents to those on the ATC-approved list -- a system which underwent detailed Board scrutiny, after full hearing, in the ATC Agency Resolution Investigation, 29 C.A.B. 258 (1959). But the present Plan has no effect on those provisions of the ATC Agency

Resolution which govern the placing of agents on or their removal from the approved list.

On the contrary, all the Plan does to petitioner or any other agent is that, as the price of relieving him of certain substantial inventory and bookkeeping costs, it reduces the length of time he is permitted to hold the airlines' funds. ^{22/} This in turn reduces the level of his net working capital, and requires him (all other things being equal) to obtain replacement funds, whether out of capital investment, retained earnings, or borrowing, in order to maintain the day-to-day operations of his business. Since capital from whatever source costs money, the net effect of the Plan is, while relieving the agent of certain costs, to saddle him with an additional cost of working capital.

In petitioner's case, due to the combined effect of the Plan's general speed-up of agents' remittances and its elimination of the existing remittance discrimination in favor of large agencies, the Plan will shorten by slightly over eleven days (supra, p. 11 , n.12) the average time petitioner is permitted to make use of the airlines' funds, and accordingly will impose on it, at most, the cost of increasing its working capital by about eleven days' average gross ticket sales. A little calculation shows that, even assuming

^{22/} There can be no possible doubt that the proceeds of an agent's sale of an airline's ticket, after deduction of commissions, are the airline's funds, not the agent's. Until quite recently agents were required to keep such proceeds in special trust accounts, where they were thus not available for use as part of the agents' working capital. Tr. 89-90; ATC Agency Resolution and Sales Agency Agreement, 35 C.A.B. 866 (1962).

an abnormally high cost of capital, and even placing a zero value on the admitted benefits of the Plan, the added costs imposed on petitioner will be insignificant in relation either to petitioner's sales or to the commissions it earns on such sales. ^{23/}

Petitioner seeks to inflate the effects of the Plan on it by insisting that it cannot obtain financing for its accounts receivable at any cost, so that the Plan will either drive it out of business or at least force it to cease extending credit, which will in turn fatally impair its ability to compete. We note initially that petitioner, although repeatedly given the opportunity to do so, has never offered the slightest substantiation for its bare assertion that it cannot obtain financing, an assertion the Board termed "speculative and without supporting evidence" (Tr. 286). But even assuming that the petitioner could demonstrate that its business is so

^{23/} Assuming an 8 percent annual interest cost for working capital -- an extravagant figure for a \$35,000,000-a-year business, the fourth largest in its industry, with petitioner's growth record (Tr. 163) -- the Plan's average 11.1-day speed-up of petitioner's remittances will at most impose on it annual costs for replacement working capital amounting to about 0.24 percent of annual sales, or about 4.9 percent of commissions earned at the ordinary 5 percent rate applicable to domestic ticket sales. A more reasonable assumption as to interest costs would of course proportionately reduce these figures, as would taking account of the higher commissions petitioner earns on many sales.

Petitioner also suggest in its brief (p. 3) that the Plan will force it to discard its central accounting system and employ additional auditors at each location. While this might have been true under the Plan as originally submitted, petitioner completely ignores the condition imposed by the Board permitting multi-location agents to make estimated remittances, precisely to accommodate the central accounting systems of such agents (Tr. 253).

marginal, its earnings so slight, its general credit standing so poor, or its credit practices so unsound that it could not finance eleven days' accounts receivable at any price, it would obviously be these deficiencies and not the Plan per se which would result in its downfall. ^{24/} As the Board pointed out (Tr. 251), it is petitioner's responsibility as an independent business organization to supply its own working capital, whether to pay its rents and salaries, to extend credit, or for any other purpose; it is not the responsibility of the airlines or anyone else to supply it with such capital -- particularly gratis, which is what petitioner is asking for. ^{25/}

Nor is petitioner aided by its claimed "reliance" on the existing system of special remittance frequencies for chain agencies. We note, first, that this unexplained and unsubstantiated "reliance" is patently more a form of words than a reality. ^{26/} But in any

^{24/} Petitioner is in the uncomfortable position of having simultaneously to establish (1) that its credit rating is so poor it cannot finance its accounts receivable, and (2) that in order to alleviate this condition, the public interest positively requires the airlines to leave their money in its hands a longer time than is allowed other agents.

^{25/} There is, of course, no special connection between an agent's remittance frequency and his extension of credit to his own customers; the one simply affects, and the other is affected by, the general level of his working capital.

^{26/} Petitioner, the undisputed facts show, achieved most of its growth under the twice-a-month remittance frequency heretofore accorded most agents. Although its tenth location was approved in August 1959, not until nearly three years later, in May 1962, did it secure permission for monthly remittances from all the domestic trunklines (Tr. 278). It enjoyed this unrestricted privilege for only four months before the filing of the Plan by the airlines -- plainly not long enough to change the whole character of its business.

event, petitioner was certainly aware that allowance of special remittance frequencies for large agencies was a matter of individual airline discretion, that its Sales Agency Agreement was terminable at will, and that the Board at all times retained its authority to permit or even require amendments to the Agency Resolution and Agreement in the public interest. Thus there was no conceivable legal basis for any such "reliance".

The supposed "right" for which petitioner claims constitutional protection -- its present privilege of holding the airlines' money and remitting it to them no more often than once a month -- is patently purely contractual in origin, stemming from the standard Sales Agency Agreement which petitioner voluntarily executed with ATC as representative of the airlines. That agreement expressly provides that it may be terminated at will by the parties thereto, acting individually or collectively, and also that it is subject to the terms of the ATC Agency Resolution as amended from time to time. When now the airlines choose to terminate the existing agreement and replace it with another -- which petitioner need not sign if it does not wish to -- no contractual or "property" right of petitioner's is invaded. 27/

27/ The airlines' procedure for implementing the Plan involves notifying agents in areas coming under it that their existing Sales Agency Agreements will be revoked as of a certain future date, and requesting them to sign and return new agreements. Those who do not cease to be eligible under the Resolution for airline appointment.

Nor does the fact that the Board has approved the Plan change the nature of petitioner's interest. The Board could frustrate implementation of the Plan by withholding its approval under section 412, but that would not necessarily restore to petitioner the privilege of monthly remittance. The Board has never attempted to require any particular airline to appoint any particular person as its agent, or to regulate the terms of their individual contract of agency, much less to require the airline to leave its money in the agent's hands any longer than the airline ^{was} ~~is~~ willing to. Indeed, only because the airlines have here chosen to act jointly does the Board, under section 412, come into the picture at all. If the Board vetoed the Plan, individual airlines would remain free, as they were before and are now, to require petitioner to remit three times a month; nothing, in fact, would prevent them from refusing to deal with petitioner at all, a privilege they also presently enjoy. Again, no right of petitioner's for which it could claim constitutional protection would be invaded. We do not see how the case is any different when the airlines have acted collectively, as they have in adopting the Plan, or how the Board's approval of their collective action changes the nature or extent of petitioner's legal rights.

Consequently, petitioner's reliance upon cases holding that a government agency must afford a due-process hearing before it can deport an alien, or bar materials from the mails, or suspend an

exemption permitting a carrier to engage in air transportation, or deny a lawyer the right to practice his profession, or deny an engineer a security clearance with the effect of rendering him unemployable, is misplaced. ^{28/} In each of these cases, the government was acting directly on the individual involved -- depriving him of his liberty, or of his right to communicate through the mails, or of his right to enter or continue in his chosen business or profession. In the Standard Airlines case, supra, there was the additional factor of destroying the value of an existing business by directly forbidding its continuance, deemed under the circumstances of the case to amount to a deprivation of property.

Here, in contrast^s, the Board's order of approval does not act directly on petitioner at all -- it simply permits, on public interest

^{28/} Wong Yang Sung v. McGrath, 339 U.S. 33 (1950) (deportation); Cates v. Haderlein, 342 U.S. 804 (1951) (use of mails); Standard Airlines v. Civil Aeronautics Board, 85 U.S. App. D.C. 29, 177 F.2d 18 (1949) (carrier exemption); Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963) (admission to bar); Greene v. McElroy, 360 U.S. 474 (1959) (security clearance). As for the last of these, compare Cafeteria and Restaurant Workers v. McElroy, 367 U.S. 886 (1961) (action imposing only a limited loss of employment does not require a due-process hearing). The cryptic per curiam reversal in Riss & Co. v. United States, 341 U.S. 907 (1951) signifies only, we think, that the governing statute there (relating to the grant or denial of "grandfather" certificates), fairly construed, requires a hearing (cf. our discussion of the Shipping Act, supra, pp.20-4), so that the Administrative Procedure Act applies. Silver v. New York Stock Exchange, 373 U.S. 341 (1963) does not involve governmental action at all; it deals with the scope of an implied (not express) exemption of private action from antitrust liability, and holds that such action is exempt only if "reasonable", procedurally as well as substantively.

grounds, collective action by the airlines to adjust their contractual relations with petitioner in a manner entirely in accordance with the terms of petitioner's contract with them. As we have shown, petitioner can claim no vested right to the continuation of the existing terms of its contract. Finally, as we have demonstrated, neither the Board's order nor the Plan operates either to deny petitioner the right to be a travel agency, or to destroy its business; the Plan simply imposes on it, in return for the Plan's benefits, a minor added cost of doing business.

Before approving the Plan, the Board gave all interested parties not one but two opportunities to submit whatever facts and arguments they might have bearing on whether the Plan was in the public interest -- a type of hearing fully appropriate to what was essentially a rule-making proceeding. No case that petitioner has cited, and no case of which counsel are aware, even begins to suggest that due process requires a formal evidentiary hearing under such circumstances, where the governing statute itself does not. On the contrary, it is patent that the requirements of due process have been fully satisfied here. Pan American Petroleum Corp. v. Federal Power Comm'n., 116 U.S. App. D.C. 249, 322 F.2d 999, 1004-5 (1963) ("The requirements of due process were satisfied by the opportunity to submit written evidence and written argument").

- D. The Board did not abuse its discretion by refusing to hold an evidentiary hearing in the present case.

In rejecting petitioner's demand for a hearing, the Board held (Tr. 252):

"While Board review of agreements filed under section 412 of the Act does not require an evidentiary hearing, we have considered whether the Board should grant Fugazy [petitioner] a hearing in the exercise of our discretion. Fugazy has made no affirmative showing that a hearing would yield any pertinent facts not already before the Board, and there do not appear to be any significant disputes of fact which require resolution. We therefore conclude that a hearing would serve no useful purpose, and Fugazy's request for a hearing will be denied."

We submit that this finding by the Board was clearly correct, and that there was nothing in the statements submitted by petitioner which made it an abuse of discretion for the Board to decline to convene an evidentiary hearing. No hearing was needed to resolve petitioner's complaint that the Plan as submitted was incompatible with its central accounting system; the Board found it a legitimate one on the basis of the written comments, and imposed conditions designed to overcome it. Petitioner's contention that chain agencies perform valuable services for the airlines was undisputed, but was hardly material in the absence of any showing that the Plan (once modified to allow for central accounting) would disable petitioner from performing those services. The remaining issues raised by petitioner's first submission were purely legal in nature.

When the Board in its order of deferral indicated that it intended to satisfy petitioner's central-accounting complaint, petitioner proceeded to shift its attack to the credit issue. Since the Board had

only recently concluded a full-scale investigation of airline and agent credit practices (Passenger Credit Plans Investigation, Order E-19197, January 16, 1963), it had the facts on this subject fully in hand, without the necessity for any further evidentiary hearings; petitioner's claim here presented solely issues of law, policy, and inference from established facts. Petitioner's claim that its business existence was dependent upon continued use of the airlines' funds to finance its own extensions of credit, we have shown (supra, p. 27), was completely contrary to the ordinary facts of business life, and was unsupported by the slightest factual substantiation. ^{29/} Under these circumstances, we cannot ~~conceive~~[✓] how the Board's failure to order an evidentiary hearing could be held an abuse of its discretion. ^{30/}

^{29/} The same may be said of petitioner's interpretation of a letter received from a Chicago bank as an offer of free services (Tr. 151, 266) -- an inherently incredible interpretation which petitioner never offered to substantiate, and which the Board rejected (Tr. 286).

^{30/} Even in cases of adjudication where a hearing would otherwise be required, none need be held when there are no material facts in dispute. Denver Stock Yard v. Producers' Livestock Marketing Assn., 356 U.S. 282, 287 (1958); United States v. Storer Broadcasting Co., 351 U.S. 192, 205 (1956); Mississippi River Fuel Corp. v. Federal Power Comm'n., 108 U.S. App. D.C. 284, 281 F.2d 919, 927, cert. denied 365 U.S. 827 (1960); Great Lakes Airlines v. Civil Aeronautics Board, 110 U.S. App. D.C. 314, 293 F.2d 153, 155 (1961); Northwest Bancorporation v. Board of Governors, 303 F.2d 832, 844 (C.A. 8, 1962) ("Petitioner was given every opportunity to submit whatever facts, data, theory, or argument it desired Apparently petitioner presented everything it had. Under such circumstances, the holding of a hearing would have *been* an unnecessary proceeding and obviously would have availed nothing.")

II. The Board's findings were adequate.

Petitioner does not here challenge the Board's findings as to the benefits to be expected from the Plan. It does, however, insist that the Board erred in not making detailed findings (a) justifying the Plan's abolition of the special reporting frequencies which large chain agencies have enjoyed since 1946 (and which petitioner has enjoyed in varying degree since 1959); and (b) justifying the alleged "anti-competitive effects" of the Plan, specifically its alleged effects on petitioner's ability to compete with the airlines themselves and with independent credit-card companies. We propose to show, however, that in the light of what has already been demonstrated as to the actual effects of the Plan on petitioner and other agents, the Board's public-interest findings in approving the Plan were completely adequate.

- A. The Plan's changes in agents' remittance frequencies are justified by its benefits and by the equality of treatment for all agents which it creates.

Petitioner complains that the Plan changes long-standing rules as to the frequency of agents' remittances. So it does; but it also changes numerous other long-standing practices, all in the interest of greater efficiency and equity. Petitioner is not entitled to treat this one feature of the Plan as an isolated detriment imposed on it without reason or justification. The Board found, as contended by the airlines, that the beneficial features of the Plan would necessarily result in certain bank and other charges; that the airlines were justified, in view of the Plan's benefits to the agents, in shifting to the latter certain of these charges; and that the most feasible way to accomplish this was to speed up agents' remittances. Petitioner wants to enjoy the admitted benefits of the Plan, but wants someone else -- the airlines, the banks, or the smaller agents -- to pay for them. The Board was under no obligation, we submit, to justify by elaborate findings its refusal to impose on a Plan it found in the public interest such patently unjust conditions.

Petitioner also complains of the Plan's elimination of the previously existing discrimination in remittance frequencies in favor of large agencies, a discrimination which it enjoyed for a short period prior to the submission of the Plan. The Board, however, plainly took into consideration and made full allowance

for the legitimate differences between the operations of large and small agents, when it required modification of the Plan to allow estimated remittances by large agents. Insofar as agents are to have the privilege of holding and using the airlines' funds as their working capital at all, small agents obviously stand just as much if not more in need of this privilege as large agents.^{31/}

As we read the Federal Aviation Act, it makes equality of treatment the rule, not the exception; it was up to petitioner to justify the pre-existing discrimination in its favor, not on the airlines to justify its abolition, or on the Board to justify refusing to insist on its perpetuation. Petitioner having signally failed to do so (beyond the matter of central accounting, on which the Board acted in its favor), no more elaborate findings by the Board than those it made here were called for.

We have already shown (supra, p.29) that petitioner could claim no vested right in the continuance of any particular remittance frequency. Petitioner's citation of Anglo-Canadian Shipping Co. v. Federal Maritime Comm'n, 310 F.2d 606 (C.A. 9, 1962) is entirely inapt. There, the Commission was seeking to require a shipping conference to change its long-continued practice as to freight-forwarders' commissions; here, in contrast, the Board is simply allowing the airlines to eliminate their prior permissive

^{31/} Every one of petitioner's arguments as to the ill effects on it of the allegedly "discriminatory" and "anti-competitive" features of the Plan applies with equal or greater force to small agents.

discrimination in favor of large agencies. Whatever presumption may arise in favor of a long-continued business practice when an agency seeks to compel its discontinuance, there is no such presumption where, as here, the parties who have established a practice -- particularly one so patently discriminatory on its face -- voluntarily seek permission to abandon it.^{32/}

- B. Petitioner failed to show that the Plan had any "anti-competitive effects" which the Board was required to investigate and justify.

The other respect in which petitioner contends the Board's findings are inadequate is in the Board's supposed failure to justify the "anti-competitive effects" of the Plan. In support of the Board's duty to investigate and justify such effects, petitioner cites the Board's own decisions in the Local Cartage Agreement Case, 15 C.A.B. 850, 852-4 (1952), ATC Agency Resolution Investigation, 29 C.A.B. 258, 261-3 (1959), and other cases. The short answer here, however, is that the supposed anti-competitive effects of the present Plan

^{32/} Petitioner's fallacy lies in assuming that because a practice has once been held under section 412 not to be adverse to the public interest, the elimination of that practice must presumptively be adverse to that interest. Plainly, however, most practices are neutral in this regard -- neither adverse to the public interest nor positively required by it.

Actually, there is nothing in the record here, nor in the Board's one-paragraph 1947 order (No. E-804), nor in the record on which that order was based, which sheds any light on either (a) why the airlines decided at that time to permit special remittance frequencies for large agents, or (b) why the Board considered this consistent with the public interest. There is no indication that the Board ever focused on the issue of discrimination against smaller agents, either in 1947 or thereafter, prior to the submission of the Plan.

required no justification by the Board because they are simply figments of petitioner's imagination.

The first complaint made by petitioner and some other agents was that, since the airlines extended thirty days' credit to their own customers, they ought to do the same for the agents. The Board very properly refuted this notion by pointing out that agents are not purchasers or users of air transportation (Tr. 250-1); their incentive to sell such transportation lies in the commissions they earn, which purchasers and users of course do not receive, and which are many times the value of thirty-day credit (see supra, p. 27, n. 23).

Petitioner's next claim is that the Plan will disable it from competing with the airlines themselves in the sale of air transportation. This claim, however, rests on the notion that there is some special connection between the length of time petitioner is permitted to hold and use the airlines' money, and its extension of credit to its own customers -- a notion whose falsity we have previously demonstrated (supra, p. 28). Actually, what petitioner wants is not to compete on equal terms with the airlines, but to have the Board force the airlines to give it an unfair competitive advantage. No one provides the airlines with free working capital so that they can extend credit to their customers; yet petitioner wants the airlines to be forced to provide it with free working capital for just this purpose. Plainly

there was nothing "anti-competitive" in the Board's refusal to shift to the airlines petitioner's responsibility to furnish its own working capital.^{33/}

Petitioner's final complaint, that the Plan will disable it from competing with credit-card companies, takes even further leave of reality. Quite patently, the functions of travel agents and credit-card companies are entirely separate and distinct, and they are in no legitimate sense competitors.^{34/} Credit-card companies do not arrange transportation or sell tickets; travel agents do not purchase accounts receivable, which is precisely what credit-card companies are set up to do. Any extension of credit by travel agents is purely ancillary to their main business, the sale of transportation.

Petitioner has not made the slightest showing that it is in any way qualified to act as a credit-card company, that any airline

^{33/} Petitioner's charge that the Plan was put forward as part of a conspiracy to prevent it from serving certain customers, or to drive it out of business (Tr. 264-5), aside from the patent unlikelihood that the airlines would put such a mountain of work into scotching a single agent, was completely refuted by the airlines when they pointed out that the Plan was in preparation long before petitioner qualified for once-a-month remittance. As for petitioner's present attempt to support this allegation by alluding to matters not of record here (Pet. Br. 42), some of which are subjects of other pending Board proceedings, we note only that this proceeding is not a general inquest into petitioner's relations with the airlines, but is limited to the merits or demerits of the Plan.

^{34/} This is particularly true because the airlines have authorized their agents to honor the same credit cards that the airlines themselves honor; on such sales, the agent simply writes the ticket, and has no responsibility for either collecting or remitting the fare. See e.g., Tr. 12, 35, 52; and see Agreement C.A.B. 17937, between American Airlines and American Express Co.

desires to employ its services in such a capacity, or that the Plan has any relevance whatever to its ability to become such a company.^{35/} Thus we need not stop to correct the numerous inaccuracies in petitioner's descriptions of the operation of credit-card companies in the air transportation field, and of the Board's conclusions as to airline credit practices in its Passenger Credit Plans Investigation, Order E-19197 (January 16, 1963), since the whole subject is patently irrelevant to the present case.^{36/}

While discussing its alleged competition with the airlines and credit-card companies, petitioner nowhere mentions the fact that its real competitors are other travel agents, most of whom have not been the beneficiaries of the special monthly remittance frequency petitioner has briefly enjoyed. Yet if the Plan had increased small agents' remittance frequencies to three a month while leaving petitioner's at one, as petitioner suggests (Pet. Br. 45), the ability

^{35/} The Board's past actions show that it does not permit the airlines to discriminate against bona fide credit-card companies, even one which happens to be affiliated with a travel agency. IATA Credit Agreements, 30 C.A.B. 1553 (1960); IATA, Extension of Credit, 31 C.A.B. 1041 (1960); American Express Company, ATC Resolutions, 31 C.A.B. 1043 (1960).

^{36/} Petitioner repeatedly quotes the findings of the Board's examiner in the cited proceeding as to the costs of various credit plans, although the Board in Order E-19197 (pp. 13-14) found these cost figures highly inflated. The American Express credit plan, of which petitioner particularly complains, charges a 2 percent fee, not "up to 4 percent" as petitioner claims (Pet. Br. 36); it typically purchases its members' accounts from the airlines upon weekly presentation, and remits the following day. Order E-19197, Appendix p. 9; Agreement C.A.B. 17937, supra, n. 34.

of the small agents to compete with petitioner would obviously have been further impaired. Here again, petitioner's plea is for unfair competitive advantage, not equal treatment. We submit that the Board was obligated neither to force the airlines to discriminate in petitioner's favor, nor to justify by elaborate findings its refusal to do so. The findings the Board did make amply support its conclusion that the Plan as modified is in the public interest.

CONCLUSION

For the reasons hereinbefore set forth, the Board's orders here under review should be affirmed.

Respectfully submitted,

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APPENDIX

Relevant excerpts from the Federal Aviation Act of 1958 (72 Stat. 737, 49 U.S.C. 1301 et seq.):

TITLE I--GENERAL PROVISIONS

DEFINITIONS

Sec. 101. [72 Stat. 737, as amended by 75 Stat. 467, 76 Stat. 143, 49 U.S.C. 1301] As used in this Act, unless the context otherwise requires--

* * * * *

(34) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

* * * * *

DECLARATION OF POLICY: THE BOARD

Sec. 102. [72 Stat. 740, 49 U.S.C. 1302] In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

* * * * *

TITLE IV--AIR CARRIER ECONOMIC REGULATION

* * * * *

METHODS OF COMPETITION

Sec. 411. [72 Stat. 769, 49 U.S.C. 1381] The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

POOLING AND OTHER AGREEMENTS

Filing of Agreements Required

Sec. 412. [72 Stat. 770, 49 U.S.C. 1382] (a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise

eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

Approval by Board

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

* * * * *

LEGAL RESTRAINTS

Sec. 414. [72 Stat. 770, 49 U.S.C. 1384] Any person affected by any order made under sections 408, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

* * * * *

TITLE X--PROCEDURE

* * * * *

ORDERS, NOTICES, AND SERVICE

Sec. 1005. [72 Stat. 794, as amended by 73 Stat. 427, 49 U.S.C. 1485]

* * * * *

Form and Service of Orders

(f) Every order of the Administrator or the Board shall set forth the findings of fact upon which it is based, and shall be served upon the parties to the proceeding and the persons affected by such order.

JUDICIAL REVIEW OF ORDERS

Orders of Board and Administrator subject to Review

Sec. 1006 [72 Stat. 795, as amended by 74 Stat. 255, 75 Stat. 497, 49 U.S.C. 1486] (a) Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

* * * * *

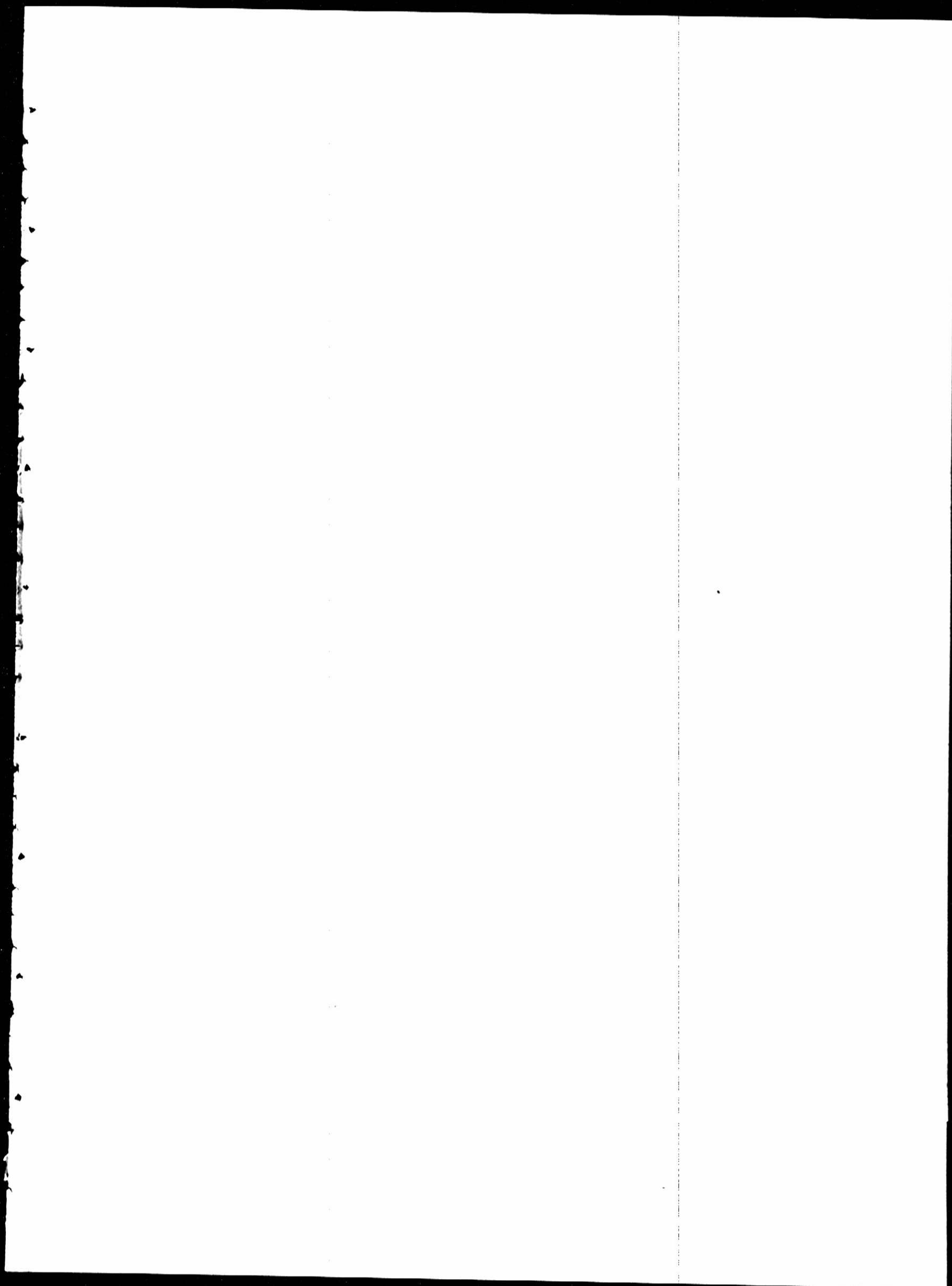
Power of Court

(d) Upon transmittal of the petition to the Board or Administrator, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Board or Administrator. Upon good cause shown and after reasonable notice to the Board or Administrator, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate.

Findings of Fact Conclusive

(e) The findings of facts by the Board or Administrator, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board or Administrator shall be considered by the court unless such objection shall have been urged before the Board or Administrator or, if it was not so urged, unless there were reasonable grounds for failure to do so.

* * * * *



FILED 3/22/65

REPLY BRIEF

William A. Paulson

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 18946

FUGAZY TRAVEL BUREAU, INC.,

Petitioner

v.

CIVIL AERONAUTICS BOARD,

Respondent

ON PETITION FOR REVIEW OF AN ORDER
OF THE CIVIL AERONAUTICS BOARD

Paul Reiber
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Bureau, Inc.,
Petitioner

March 22, 1965

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 18946

FUGAZY TRAVEL BUREAU, INC., Petitioner

v.

CIVIL AERONAUTICS BOARD, Respondent

ON PETITION TO REVIEW ORDER OF CIVIL AERONAUTICS BOARD

REPLY BRIEF

This Reply Brief is impelled by mistatements in the Board's Brief. The Board's brief, filed March 5, 1965, mistates the facts (1) as to when appellant commenced remitting once every 30 days; and it asserts (2) that the new plan, by requiring remittances each 10 days, will only shorten the remittance period by 11 days, and (3) that credit card companies are not competitive with Fugazy.

- I. Petitioner had acquired business and investment property in the authorization previously granted to remit once each 30 days. The Board seeks to minimize the value of this privilege by several assertions which are in conflict with the facts.
 - A. Petitioner's practice - with Board approval - of remitting once each 30 days began in March 1960 and became essential to its method of doing business.

The Board's allegation at page 28, footnote 26, that not until May 1962 "did it (Fugazy) secure permission for monthly remittances from all the domestic trunklines" is inaccurate and misleading. Fugazy does not now have the alleged permission,

and it is irrelevant, because it needs such permission primarily from the carriers for whom it sells the most traffic. Furthermore, the proposed agreement would bar any domestic air carrier from permitting Fugazy to remit on a monthly basis. It is the complete destruction of the present permission which imposes the hardship on Fugazy.

- B/ The Board's allegation, at pp. 14, 29-30 of its Brief, that the privilege of remitting monthly is purely contractual and terminable at will, is contradicted by the fact that it was permitted only after Board approval in 1948 and, as stated in the proposed agreement, will be terminated only with the Board's approval.

Admittedly, each airline individually can terminate the agreements to permit remittance each 30 days, but the Board's brief has missed the significant feature of the agreement - the airlines have chosen to act in concert to prevent any airline from continuing authority for 30-day credit. And only with the Board's approval will the agreement become effective. The agreement specifically so provides in paragraph 39 of the Resolution. (Tr 19).

The airlines are not seeking to abandon the past practice as individuals or under their contractual right. Rather, by concerted action they seek to prevent any individual airline from continuing the practice. It is clear that such concerted action would be in violation of the anti-trust laws, except for Board approval under Sec. 412 of the Federal Aviation Act.

The issue therefore is whether the concerted action is in the public interest, and whether the findings of the Board justify the action.

- C. The Board's allegation at pp. 11, 26-27 that the change in remittance period will "shorten by slightly over eleven days" the average time between remittance periods is contrary to the facts.

Fugazy now may sell air transportation for 30 days and remit for such sales only on the 7th day after the 30 day period. This permits Fugazy to sell on credit and to remit for its sales after it has billed for the sales of the preceding 30 days. Under the proposed plan, Fugazy would have to remit after each 10 day period. It, therefore, could not acquire the funds by billing after the 30 days of sales. There is nowhere in the record any discussion of any shortening of the period by 11 days, nor was there testimony or cross examination on such allegations. What is clear is that the basis of the petitioner's business would be destroyed by concerted action which can be effected only with Board approval which it proposes to give without appropriate findings.

The Board's effort to minimize the precedent of the interpretations of Sec. 15 of the Shipping Act of 1916 also misconstrues legislative history

- D. The Board's assertion, at pp. 21 and 23, that Section 15 of the Shipping Act of 1916 is something quite different from Section 412 of the Federal Aviation Act of 1958 is contradicted by the legislative history of the Civil Aeronautics Act of 1938 which was the predecessor of the 1958 Act.

The Board's brief dwells at some length on the differences between Section 15 of the Shipping Act and Section 412 of the Federal Aviation Act of 1958.

The government took quite a more enthusiastic view of the ancestry of Section 412 when it was conceived. Thus, when representatives of the Administration were seeking the enactment of the Civil Aeronautics Act in 1938, they submitted a memorandum in support of the section which became section 412 which stated "...the most important precedent will be found in Section 15 of the

Shipping Act of 1916" (Hearings before the Committee on Commerce, U.S. Sen. 75th Cong. 3rd Sess., on S. 3760 (1938) p. 12)

The spokesmen for the air carriers were even more emphatic in their reliance on the experience of and legislation applicable to the maritime carriers.

Mr. Howard Westwood, Counsel for the air carriers stated:

"Section 15 of the Shipping Act of 1916 is almost exactly like the provisions that you have here in the bill before your committee in section 409 (f) (1) and (2) as combined with section 411. It, in almost the same words, gives the same privilege, subject to the same safeguards." (Hearings before the Committee on Interstate and Foreign Commerce, House of Rep., 75th Cong., 3rd Sess. on HR 9738 (1938) p. 305).

In the hearings before the Committee on Interstate and Foreign Commerce, H. of Rep., 75th Cong., 1st Sess. on H.R. 5234 and Hr 4652 pp. 346-349 the chief spokesman for the air carriers, Col. Gorrel, stated:

"Problems such as I have mentioned must somehow be met, and the air-line industry does not desire to wink at the antitrust laws. The only reasonable alternative seems to be the one which Congress has already approved in the case of the industry which is most similar to air carriers, that is the shipping industry."

The interpretation of Section 15 of the Shipping Act of 1916 is applicable precedent, therefore, for the interpretation of Section 412 of the Federal Aviation Act of 1958.

- E. The Board's assertion at p. 21 of its Brief that the requirement of a hearing under Section 15 of the Shipping Act of 1916 was the view of "some Senators" is contradicted by the Report of the Senate Committee sponsoring the legislation.

The Board's brief seeks to dismiss the argument that third-party protestants of an agreement under Sec. 15 of the Shipping Act of 1916 are entitled to protest in an adversary proceeding by referring to it as merely a view held by "some senators". (Board's Brief p. 21)

To the contrary, however, is the Report of the Senate Committee on Commerce, the committee sponsoring the 1961 amendment of the Shipping Act of 1916 which reported:

"In Isbrandsten Co. v. U.S. (81 F. Supp. 544, (S.D.N.Y.)), ... the district court enjoined the Board from approving a dual-rate system until Isbrandsten had an opportunity to protest the system in an adversary proceeding before the Board... In Isbrandsten v. U.S. (211 F. 2d 51 (D.C. Cir.) cert. denied, 347 U.S. 990 (1954)) the U.S. Court of Appeals for the District of Columbia Circuit held the Board's action improper on the grounds that before such an agreement may become effective under such circumstances the Board must hold a hearing and give its formal approval." (S. Rep. No. 860, 87th Cong., 1st sess. at pp. 8-9 (1961)).

Portions of the Report repeated at pp. 372-3, S. 100, 87th Cong. 2 sess., "Index to the Leg. Hist. of the Steamship Conf. Dual Rate Law."

F. The cases cited by the Board as not requiring a hearing dealt with situations where a hearing on the merits was to be held.

The Springfield Airport (109 U. S. App. D. C. 197, 285 F. 2d 277 (1960)), and Nebraska Department of Aeronautics (298 F. 2d 286 (C.A. 8, 1962)), cases cited on page 18 of the Board's Brief also provide no precedent. In those cases the application ruled on was for temporary suspension of authority to serve points. Before permanent suspension was to be allowed a hearing would be held. These cases provide no help in the case before this court, because the only opportunity for a hearing on an agreement is at this stage.

The Eastern (87 U.S. App. D. C. 331, 185 F. 2d 426 (1950)), and American (97 U. S. App. D. C. 324, 231 F. 2d 483 (1956)), cases cited in the Board's brief at page 18, involved applications for exemptions under Section 416(b)(1) for temporary authority which was to be granted pending the processing of an application for authority on a permanent basis. To grant the latter authority required a hearing, so that before the merits of the case were decided permanently there would be a hearing. This contrasts with the case now before the court. If no hearing is required now, the merits will be disposed of without a hearing.

II. The Board failed to consider and to make findings with respect to the Anti-Trust implications of the proposed area settlement plan.

The Board seeks to deny the anti-competitive effects of the Plan by asserting at pp. 16 and 40 of its Brief, that credit card companies "in no way compete with agents..." and ascribing Fugazy's allegations as taking "even further leave of reality." On the contrary, however, a commercial account purchasing air transportation on a continuous basis would immediately realize that Petitioner and the credit card companies offer competing services. If he establishes an account with Petitioner, he can charge his purchases of air transportation at any of Petitioner's offices throughout the Nation and pay for such services on a 30 day basis. Alternatively, he might utilize a general purpose credit card and purchase his air transportation anywhere, through a travel agent or directly from the air carrier. The credit card companies also realize that Petitioner is their competitor since if users of air transportation accept Petitioner's offer of 30 days credit, the credit card companies cannot earn their commission on such purchases. Conversely Petitioner recognizes the credit card companies as its competitor since if users of air transportation utilize a general purpose credit card, they will not necessarily bring their business to Petitioner, and Petitioner will lose its

commission on the sale.

Despite the assertions of the Board on p. 42, footnote 36 regarding the practices of the American Express Company, the fact remains that in the Passenger Credit Plans Investigation, the Board approved the extension of 30 or 45 days credit by air carriers to credit card companies and also the payment of a commission of up to 4%.

These were the privileges authorized by the Board at the time this agreement was acted upon. The Board's brief seeks, at pages 40 and 41, (footnotes 34 and 36) to bring into this case the terms of an agreement between American Airlines and American Express Company. This is patently improper. The assertions of that agreement are not under oath. They have not been subjected to cross examination, and they call for conduct which only subsequent experience can verify. There had been no testimony as to the experience under that agreement before the Board when the present case was decided, and Petitioner specifically denies that the present practices of the American Express Company are as set forth in the Board's footnotes. According to Petitioner's information, American Express pays for air travel sold after a time lag substantially longer than that asserted by the Board.

The Board states that there is nothing anti-competitive in the present plan since there is no reason why the airlines

should furnish Petitioner with working capital and adds that no one furnishes the airlines with free working capital. However, as the Board itself recognizes in the Passenger Credit Plans Investigation, the furnishing of 30 days credit is a necessary additional cost of doing business, given the present competitive climate. There is, of course, only one reason why any businessman would extend credit to his customers, and that reason is that he is forced to do so for competitive reasons. The airlines are in the position of any manufacturer who sells both at retail and at wholesale. Why should he extend credit to his wholesale customers, who compete with him for retail sales. The answer is that the competitive climate forces him to do so. There was no obligation on the part of the airlines to agree to permit Petitioner to report on a 30 day basis in 1959 when Petitioner qualified for such a reporting period. However, many of the airlines for whom Fugazy sold tickets found it in their interests to agree that Petitioner could report on a 30 day basis. Now the Board would authorize the airlines to prohibit all others from extending this 30 day reporting period to Petitioner.

The Board in its Answering Brief disclaimed any knowledge of how the Board ever came to grant a 30 day reporting period to large travel agencies, a feature which it refers to as

"patently discriminatory" (p. 38) and "unfair competitive advantage" (p. 42). We submit that it ill behooves the Board to assert that it exercises its obligation to approve only agreements consistent with the public interest in such a slipshod fashion. The Petitioner, at Tr. 61-64 set forth the reasons for the rule.

The Board's Brief (pp. 41-42) asserts that Petitioner's real competitors are the small travel agents who have never had the benefit of the 30-day reporting period. In point of fact, the small agents have never been equipped to compete with Petitioner for large commercial accounts because they do not have the nationwide facilities that Petitioner can provide. Petitioner has 23 national offices, provides the air carriers with a single report for all of its offices, and it generates a volume of traffic which no small agent could provide.

No travel agent or carrier prior to the submission of the present plan complained of the 30 day feature as being adverse to the public interest, and the Board did not raise the question on its own motion although it is fully authorized so to do. The fact remains that for a 5% commission, Petitioner has been assuming both the selling and administrative costs of selling air transportation and the credit risk and part of the cost of carrying receivables from purchasers of air travel. If this air travel

were sold by the airlines on its air travel card, of course, the airlines would have to bear the burden of these costs. If the air travel is sold through a credit card company and the purchase is through a travel agent the air carrier will pay a total commission of up to 9% instead of a commission of only 5%. Thus it is not at all so clear as the Board submits that the present practices are adverse to the public interest, and at any rate the Board has failed to meet the standards cited with approval in Isbrandsten Co. v. U. S. 96 F. Supp. 883, (S. D. N. Y. 1951), affirmed per curiam 342 U.S. 950 (1952), where at page 892 the court said:

"In oral argument before us, counsel for the Federal Maritime Board seemed to suggest a different interpretation, i.e., that at least in initially approving a conference agreement under Sec. 814, the Board has no obligation whatever to inquire into unjust or unfair discrimination; need make no finding on that score; and, only if it does choose to inquire and also does choose to find unjust or unfair discrimination, need it disapprove or modify the agreement on that ground. This is a somewhat surprising contention, to be contrasted with the following views of Commissioner Aitchison of the Interstate Commerce Commission concerning the obligations of administrative agencies: 'They are not expected merely to call balls and strikes, or to weigh the evidence submitted by the parties and let the scales tip as they will. The agency does not do its duty when it merely decides upon a poor or nonrepresentative record. As the sole representative of the public, which is a third party in these proceedings, the agency owes the duty to investigate all the pertinent facts, and to see that they are adduced when the parties have not put them in...The agency must always

act upon the record made, and if that is not sufficient, it should see the record is supplemented before it acts. It must always preserve the elements of fair play, but it is not fair play for it to create an injustice, instead of remedying one, by omitting to inform itself and by acting ignorantly when intelligent action is possible....'."

III. CONCLUSION

For the reasons set forth herein and in the Petitioner's Brief, the order under review should be set aside with respect to the Petitioner.

Respectfully submitted,

Paul Reiber

Paul Reiber
Attorney for Petitioner

March 22, 1965.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Reply Brief on Counsel for the Board by mailing a copy, postpaid, to his office at the Civil Aeronautics Board, Washington, D. C.

Paul Reiber

Paul Reiber

March 22, 1965.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 18946

FUGAZY TRAVEL BUREAU, INC., Petitioner

V.

CIVIL AERONAUTICS BOARD, Respondent

ON PETITION TO REVIEW ORDER OF CIVIL AERONAUTICS BOARD

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 30 1965

PETITION FOR REHEARING

Nathan J. Carlson
CLERK Now comes the appellant, Fugazy Travel Bureau, Inc.,

for rehearing in the above-entitled case decided June 18, 1965^{1/} by the Court en banc and in support thereof, respectfully shows:

I. The Board reached a decision adverse to the petitioner after granting the air carriers an ex parte hearing and denying the petitioner a hearing.

The ex parte hearing is clearly shown in the Joint Appendix at P.92, where the airlines acknowledge they had a meeting with the Board's staff. The decision of the Court

^{1/} The time for filing petition for rehearing was extended to August 1, by order dated July 13, 1965.

leaves approved such Board procedure in the Board's handling of the vital interests of travel agents.

This is contrary to the decision in this Court in Sangamon Valley Television Corp. v. U.S. ^(111 US) App. D.C. 113, 294 F 2d 742 (1961).

The unfairness of an ex parte hearing was compounded by the Board's taking action on the basis of allegations by the air carriers, none of which were under oath.

Two of the cases cited by the Court to support the decision that petitioner is not entitled to a hearing both held that the action taken without a hearing was improper. Mr. Justice Frankfurter, quoted by the court at p.9 discussed eloquently the need for a hearing, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 165-168 (1951), the holding in Dixon v. Alabama State Board of Education, 294 F2d 150 (1960), cited by the Court at p.9, was that due process requires notice and opportunity for hearing before a student at a tax-supported college can be expelled for misconduct.

II. The Court's conclusion that petitioner "is without legal status enabling it to challenge the Board's action ..." denies travel agents legal recourse against concerted action by air carriers clearly in violation of the anti-trust laws except for Board approval.

The air carriers' amendment of the agreement with Petitioner was concerted action and could be exempt from the anti-trust laws only by virtue of Board approval.

The Court's view, expressed on pages 9-10 of the slip opinion that "this agreement expressly provides, however, that it may be terminated at will by the parties thereto, acting individually or collectively," does not reflect the fact that the agreement between the Petitioner and each airline provides that it can be terminated by the individual carrier (not plural) or the agent. In fact, the agreement is between each carrier individually and each agent individually. And as individuals each is free to terminate. But since the agreements are individual, there is no basis in the agreement for the conclusion that the carriers can collectively cancel.

The Court goes on to say at p. 10 that "the agreement also specifically provides that it is subject to the terms of the air traffic conference Resolution as it is amended from time to time...". But the Court overlooks the fact that such amendment is joint action and is an agreement by the air carriers which must be filed with the Board under Section 412 of the Federal Aviation Act of 1958, and such action is exempt from anti-trust restraint only if the Board approves.

The carriers recognized their dependence on Board action and called for the agreement to become effective only after Board approval. (JA-28)

It was Board action that permitted the agreement to go into effect and only with Board action could the harm to the petitioner be inflicted.

To decide that petitioner has no legal status to challenge the Board's action is to deny it redress, and leave travel agents in the position of having the anti-trust laws repealed with respect to them.

This conclusion is contrary to the view of this Court in Isbrandtsen Co. v. United States, 93 U.S. App. D.C. 293, 211 F 2d 51, cert. denied 347 U.S. 990 (1954), where this court had under consideration the authority of the Federal Maritime Board to exempt certain agreements among vessel operators from the application of the anti-trust laws. In referring to the exercise of such authority by the FMB, this court said at p. 57:

"The condition upon which such authority is granted is that the agency entrusted with the duty to protect the public interest scrutinize the agreement to make sure that the conduct thus legalized does not invade the prohibitions of the anti-trust laws any more than is necessary to serve the purposes of the regulatory statute..."

The decision in this case would exempt the Board from making the findings stated to be necessary in that decision.

III. The Board's action clearly discriminates as between travel agents. The court recognized that on p.11 by pointing out that the American Express Company, by being both travel agent and credit company could do what petitioner was denied. Admittedly the credit plans were considered by the Board in a different proceeding (Passenger Credit Plans Investigation, Order E-19197) but that does not justify discriminatory treatment to petitioner. The sales on credit policies approved in one case to favor petitioner's competitors should not be ignored in another to discriminate against and destroy the petitioner's established business.

Respectfully submitted

Paul Reiber
1815 H Street, N.W.
Washington, D.C.

July 29, 1965

Attorney for petitioner
Fugazy Travel Bureau, Inc.

CERTIFICATE OF GOOD FAITH

I hereby certify that this petition is presented
in good faith and not for delay.

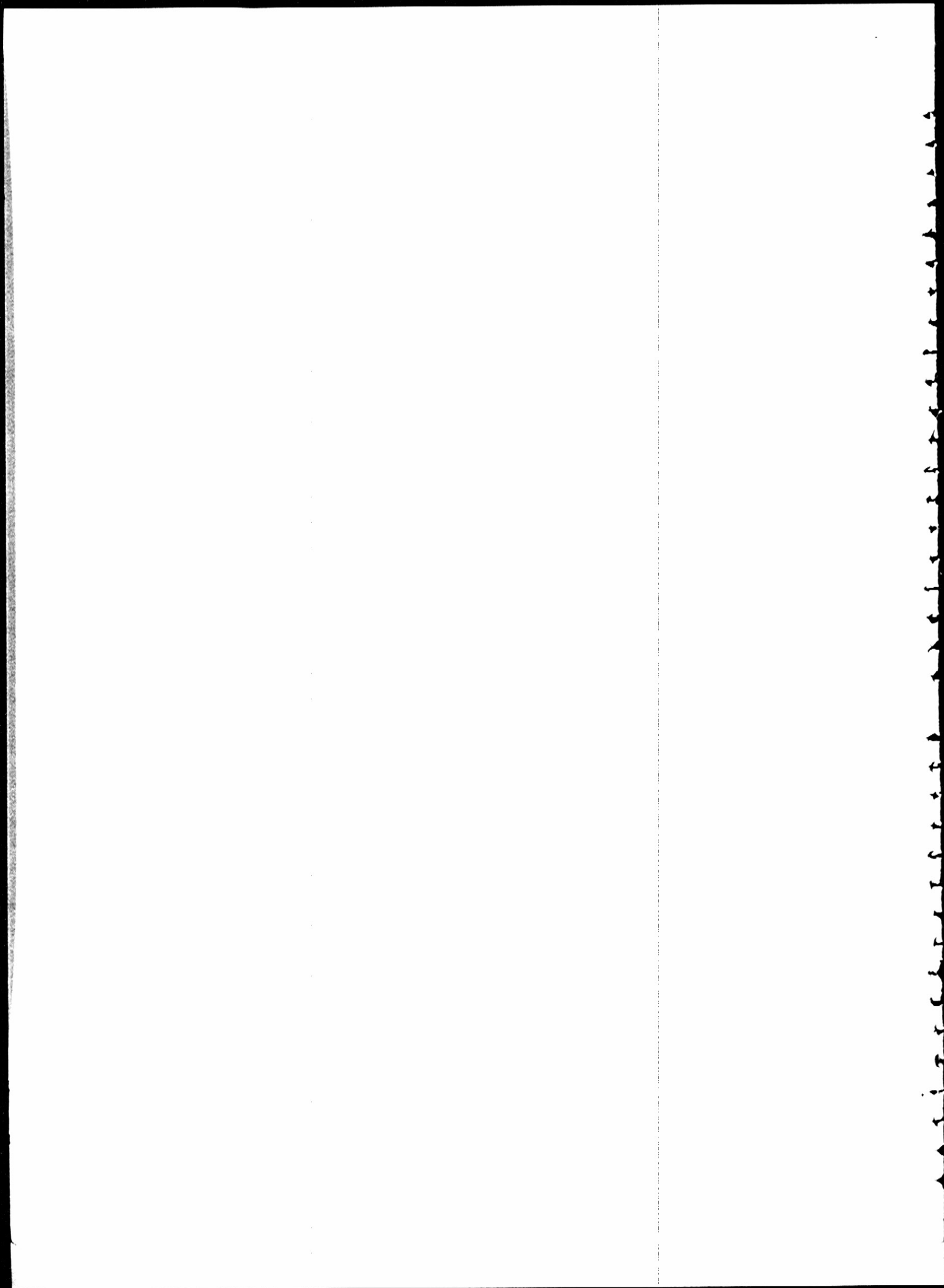
/s/ Paul Reiber
Paul Reiber

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this
petition for rehearing on counsel for the Board by mailing
a copy, postpaid, to his office at the Civil Aeronautics
Board, Washington, D. C.

July 29, 1965

Paul Reiber



RESPONDENT'S ANSWER TO PETITION FOR REHEARING

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,946

FUGAZY TRAVEL BUREAU, INC.,

Petitioner,

v.

CIVIL AERONAUTICS BOARD,

Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE
CIVIL AERONAUTICS BOARD

LIONEL KESTENBAUM,
Attorney,
Department of Justice.

JOHN H. WANNER,
General Counsel,
Civil Aeronautics Board.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FUGAZY TRAVEL BUREAU, INC., :
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 Petitioner, :
 :
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 v. :
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CIVIL AERONAUTICS BOARD, :
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 :
 Respondent. :

ANSWER TO PETITION FOR REHEARING

The petition for rehearing herein, filed July 29, 1965, for the most part simply seeks to reargue questions already fully briefed and argued, and calls for no further comment on the Board's part.

The one matter possibly calling for comment is petitioner's belated effort to assert that an improper ex parte hearing was granted the air carriers but not to petitioner. This untimely attempt to raise a new issue may be summarily dealt with as follows: First, although the letter evidencing an informal conference between carrier representatives and members of the Board's staff was made part of the record of the Board's proceeding and a copy was served on petitioner's counsel (J.A. 96), petitioner did not in either of its subsequent pleadings to the Board (J.A. 122, 180) raise this conference as an issue; consequently, it is barred from doing so here by section 1006(e) of the Federal Aviation Act, 49 U.S.C. 1486(e). Second, petitioner raised this issue in neither its opening nor its reply brief to the Court; thus under the Court's own

rules and the Prehearing Conference Stipulation herein (p. 3, last par.) the issue must be treated as abandoned for purposes of review. Third, there is not the slightest showing of impropriety in, or prejudice resulting from, this exploratory conference, held in a case where formal hearing procedures were not required. Subsequent to this conference the Board invited comments from all interested parties, including petitioner, and entered its order on the basis of the comments.

Respectfully submitted,

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